DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 26433; Amendment No. 91-225]

RIN 2120-AD96

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airplane operating rules to require a phased transition to an all Stage 3 fleet operating in the 48 contiguous United States and the District of Columbia by December 31, 1999. These revisions implement sections 9308 and 9309 of the Airport Noise and Capacity Act of 1990. This rule places a cap on the number of Stage 2 airplanes allowed to operate in the contiguous United States and provides for a continuing reduction in the population exposed to noise from Stage 2 airplanes.

EFFECTIVE DATE: September 25, 1991.

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:

Availability of NPRM's and Final Rule

Any person may obtain a copy of this final rule 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 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

On November 5, 1990, Congress passed the Airport Noise and Capacity Act of 1990 (the statute). In the statute, Congress recognized that a national aviation noise policy was necessary because of the national and international nature of our aviation system.

A critical part of that national policy was set by Congress when it directed the elimination of Stage 2 airplanes operating in the contiguous United States. Specifically, the statute prohibits the operation of Stage 2 airplanes with a maximum weight of more than 75,000 pounds to or from an airport in the 48 contiguous United States and the District of Columbia after December 31, 1999. The statute provides limited authority to the Secretary of Transportation (the Secretary) to grant waivers to allow operation of a limited number of Stage 2 airplanes until December 31, 2003, if the Secretary finds that granting such waivers is in the public interest. The statute also requires the Secretary to establish a schedule of phased-in compliance with the statutory prohibition.

The Secretary delegated the authority to issue regulations implementing these statutory provisions to the Administrator of the Federal Aviation Administration (FAA).

Subsequently, the FAA published a Notice of Proposed Rulemaking (NPRM) (56 FR 8628, February 28, 1991), inviting all interested persons to submit written comments, data, views, and arguments on the proposed regulations. The comment period closed April 15, 1991.

The FAA held three public meetings to solicit further discussion of the proposed rules. These meetings were held in Washington, DC on March 5 and 6, in Chicago, IL on March 11 and 12, and in Seattle, WA on March 14 and 15, 1991. Transcripts of the proceedings of each meeting were placed in Docket No. 26433 and were considered as comments to this rulemaking.

The FAA received over 300 separate written comments to the NPRM representing a wide range of interests, including the aviation, environmental, and financial communities. In addition, numerous postcards responding to one particular issue were received.

Due to the large number of comments received, not every comment is addressed individually in the preamble, although all comments have been considered. Comments that address the same or related issues are grouped together. Proposals retained in the final rule generally are not discussed in detail so that the reader may focus on provisions that have changed from the proposed rule.

The requirements proposed in the NPRM were designed to provide several alternatives for the FAA to choose among to implement the Congressional mandate to impose an interim compliance schedule.

Changes in this final rule reflect the FAA's and many commenters' concerns that the regulation provide as much flexibility as possible for airplane operators while at the same time achieve noise benefits for communities and individuals. To the extent possible, the final rule is intended to reduce the cost to the aviation industry for the interim compliance requirements and realize the benefits to affected parties, while maintaining air transportation service to all affected communities.

Final Rule—Overview

The Airport Noise and Capacity Act of 1990 states that after December 31, 1999, no person may operate a civil subsonic turbojet airplane certificated at more than 75,000 pounds in the contiguous United States unless that airplane meets Stage 3 noise levels. That statute also requires that a schedule of phased-in compliance be established.

Following its review of the comments, the FAA has determined that it is necessary to make a number of significant modifications to the compliance method proposed in the NPRM. These changes respond to suggestions made by commenters and, in general, are intended to increase the flexibility of Stage 2 airplane operators in finding the best means to comply with the transition to an all Stage 3 fleet required by this final rule. The following is a summary of the major changes incorporated in the final rule.

Additional Compliance Flexibility

The NPRM proposed to require a phaseout of Stage 2 airplanes with a maximum certificated weight of more than 75,000 pounds. As proposed, U.S. operators would reduce their Stage 2 fleets by 25 percent after December 31, 1994, 50 percent after December 31, 1996, and 75 percent after December 31, 1998. These reductions could take place through elimination or noise abatement retrofitting of Stage 2 airplanes. By statute, all Stage 2 operations in the United States must end by December 31, 1999, although U.S. air carriers are authorized to request waivers under specified conditions. The gradual phaseout of Stage 2 airplanes proposed in the NPRM would provide an increasing percentage of the fleet being composed of quieter Stage 3 airplanes, and a corresponding reduction in the number of people living in areas adversely affected by Stage 2 airplane noise.

A large percentage of air carriers, however, argued that the proposed rule should be modified to permit substantially greater flexibility in making the transition to an all-Stage 3 fleet. After further consideration of all

the comments and the economic condition of the aviation industry, the FAA is persuaded that greater flexibility is needed, particularly by carriers with limited current financial resources. Accordingly, this final rule incorporates three provisions to improve compliance flexibility, thereby reducing the compliance costs for airlines and other Stage 2 operators. These three provisions are discussed below.

Compliance Schedule—First and most important, operators will have the choice of complying with either the phaseout schedule proposed in the NPRM or an alternative based upon achieving a minimum number of Stage 3 airplanes to meet certain fleet mix percentages. Specifically, after December 31, 1994, each operator must either reduce the number of Stage 2 airplanes it operates by 25 percent or operate a fleet composed of not less than 55 percent Stage 3 airplanes. After December 31, 1996, each operator must either reduce its Stage 2 airplanes by 50 percent or operate a fleet composed of not less than 65 percent Stage 3 airplanes. After December 31, 1998, at least 75 percent of an operator's Stage 2 airplanes must be eliminated, or its overall fleet must be 75 percent Stage 3 airplanes. Some operators will find the NPRM's phaseout schedule less costly; others, particularly those that are growing, are likely to choose the fleet mix method that is included in the final rule. The FAA has found that this combination of methods will result in significant cost savings for the industry while still preserving environmental gains. Since the greatest environmental gains occur near the end of the phaseout period, there is no ultimate difference in the two approaches, and under both approaches, steady progress toward an all Stage 3 fleet is achieved throughout the decade.

Substantial flexibility is achieved by allowing each U.S. operator and foreign air carrier to determine the date it uses to establish its base level of Stage 2 airplanes from which to reduce, and to choose the Stage 2 airplanes that will continue to operate past each compliance date. These provisions allow for variances in fleet planning and for fleet composition that is affected by seasonal operations and such circumstances as the war in the Persian Gulf.

Carry-Forward Credits for Early Compliance—The final rule provides a carry-forward credit system for early compliance. An operator that exceeds the requirements of the rule at one of the earlier compliance dates may earn a credit for its own use at a later interim compliance date. For example, if an operator would be required to eliminate 25 Stage 2 airplanes by December 31, 1994, but instead eliminates 35, it may claim a 10-airplane credit against its compliance with the 1996 or 1998 requirements. This will allow each operator to better manage the transition period in accordance with its individual fleet needs. Because no transfers of such credits between operators will be allowed, the concerns expressed in the comments that transfers of noise credits between operators will result in noise "dumping" in some areas of the country is eliminated. This is a limited version of the credit system contemplated in one part of the NPRM. No credits may be applied to the 1999 statutory deadline.

Waivers—The final rule provides that an operator may apply to the Secretary for a waiver from an interim compliance requirement when it can show that such a waiver is in the public interest. Waivers from interim compliance requirements may be granted based on technological or financial constraints that make compliance onerous for individual operators or that adversely affect competition or service to small communities. The final rule describes the standards for these waivers and for waivers from the final compliance date. Waivers from the final compliance date are expressly provided for by the statute.

Because the waivers would be granted upon individual request, the system is able to respond to the comments of airports and their neighbors that there be no broad exemption from the compliance requirements. Individually requested waivers should also reduce concerns that the proposed transfer of Stage 2 operating rights could have shifted the noise burden from one area of the country to another, or cause an anticompetitive transfer of resources from the "have nots" to the "haves." The transfer of Stage 2 operating rights was not adopted in the final rule.

Treatment of Foreign Air Carriers

The NPRM proposed that each U.S. operator would reduce the number of Stage 2 airplanes in its fleet, while each foreign air carrier would reduce the number of its Stage 2 operations to the United States, irrespective of the number of Stage 2 airplanes on its U.S. operations specifications. Some foreign air carriers objected, noting that this system discriminates against them. As discussed in detail in this document, the final rule incorporates as much equality of treatment as possible, including the requirement that both U.S. operators and foreign air carriers comply with the transition by modifying the composition of their fleets.

Nonaddition Rule

The statutory nonaddition rule essentially prohibits the operation in the contiguous United States of any Stage 2 airplane that was purchased by a U.S. person after November 5, 1990, the date of the statute. The statutory nonaddition rule is codified into these regulations as a rule that describes those Stage 2 airplanes that are eligible for operation in the contiguous United States. All Stage 2 airplanes that were owned by U.S. parties on and since November 5, 1990, are eligible for operation. Foreign-owned Stage 2 airplanes that were leased to U.S. persons on September 25, 1991 may also be operated through the term of their leases. U.S.-owned airplanes that were leased to foreign airlines have 6 months to return to the U.S. after the expiration of those leases. Foreign air carriers and foreign operators may also continue to operate their owned or leased Stage 2 airplanes. All Stage 2 airplanes, of course, are subject to the transition rules.

Discussion of Comments—General

Part 36 Noise Levels

NPRM: The proposed rule stated noise criteria in terms of those found in 14 CFR part 36.

Comments: Several groups of citizens concerned about airplane noise state that not all Stage 3 airplanes are equal, in that some Stage 3 airplanes may be noisier than some Stage 2 airplanes during certain operations. A commenter requests that Stage 3 airplanes be further classified as to their noise output, and that the regulation contain quieter design standards for future airplane production and standards that measure the effect of noise on people. A group asserts that the use of the term "Stage 3 noise levels" in the statute means Stage 3 without any of the tradeoffs allowed in part 36, and that the proposed regulations are therefore less strict than the statute. One locality states that the FAA should insist on the accelerated development of Stage 3 airplane noise reduction equipment. Several operators comment that the final rule should include specific reference to part 36 as it existed on November 5, 1990, the date of the statute.

Final Rule: Section 9308(h)(2) of the statute defines "Stage 3 noise levels" as those set out in 14 CFR part 36 in effect on November 5, 1990. The definition of "Stage 3 noise levels" as it is used in these regulations reflects this provision

of the statute. Since the tradeoff provisions are part of part 36, the FAA does not agree that the statute is stricter than the regulation. Both the statute and the regulation cite part 36 as a whole.

Accordingly, the FAA cannot use any stricter standards than those contained in part 36 for this regulation, nor can it "distinguish" between Stage 3 airplanes that all meet the criteria of part 36. Further, part 36 is an aircraft certification standard. These regulations represent a change in the airplane operating rules, and it is beyond the scope of the NPRM to address requested changes to the noise certification standards of part 36.

While the FAA encourages and supports the development of noise reduction technology for all airplanes, it cannot mandate that such technology be produced by the aviation industry. As required by section 611 of the Federal Aviation Act (FAAct) the FAA will continue to establish noise certification standards that are economically reasonable and technologically practicable.

Weight Criteria

NPRM: The NPRM proposed to limit the applicability of the phaseout and nonaddition requirements to civil subsonic turbojet airplanes with a maximum certificated weight of more than 75,000 pounds.

Comments: Several commenters request that the rule be expanded to include all Stage 2 airplanes regardless of certificated weight. These commenters state that a comprehensive noise policy must include and regulate all airplanes. They contend that smaller Stage 2 airplanes are part of the noise problem. Some commenters request that smaller Stage 2 airplanes remain exempt from the rule because they are a small part of the problem and because compliance with a phaseout would place undue economic hardship on the operators of these airplanes.

Final Rule: The statute set out the intent of Congress and describes the airplanes that are subject to the rule as those that have a maximum certificated weight of more than 75,000 pounds. This final rule reflects Congress' intent.

Violations

NPRM: The proposed rule restated the statutory provision:

> Violations of (sections 9306 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 VI.

The NPRM stated that the final regulations would be enforced in accordance with FAR part 13, Investigations and Enforcement Procedures.

Comment: A few commenters request that specific enforcement plans be included for enforcement of the nonaddition rule, including prohibiting aircraft purchased after November 5, 1990, from being registered in the United States.

Final Rule: The nonaddition rule does not prohibit a U.S. person from owning a Stage 2 airplane purchased from a non-U.S. person after November 5, 1990. The rule limits only the operation of such airplane in the contiguous United States. Section 501(b) of the FAAct requires that if the owner of an aircraft meets certain criteria, that aircraft will be added to the U.S. registry; the statute did not amend the FAAct to prohibit such registration. Registration alone does not permit these aircraft to operate in the United States; all airplanes are subject to the operating rules of part 91. The operational restrictions implementing the nonaddition rule have been added as § 91.855.

Comment: A commenter cites section 9307 of the statute as support for the fact that an airport operator may be denied federal funds and the eligibility to impose passenger facility charges if it imposes any noise restrictions not in compliance "with this subtitle." The commenter states that since the phaseout and nonaddition provisions of sections 9308 and 9309 are part of the same subtitle as section 9307, the imposition of any noise restrictions inconsistent with those provided in the final rule must be considered violations of the regulations and sanctioned accordingly.

Final Rule: The regulations adopted in this final rule are amendments to the aircraft operating rules of part 91 and are applicable to operators of Stage 2 airplanes, not airport proprietors. The FAA does not interpret the statute to mean that the imposition of a noise restriction by an airport proprietor is a violation of an aircraft operating rule. Airport operating restrictions imposed by airport proprietors must be considered under the regulations established under new part 161.

Comment: Several commenters request that a separate enforcement plan be included for the operating noise limit amendments, similar to that proposed for the airport noise restrictions in a separate rulemaking action. Other commenters ask that the specific penalties be included in the regulations.

Final Rule: No separate enforcement plan is necessary. The same actions that have been used to enforce the noise regulations of part 91 subpart I will be used for the new regulations added to that subpart. The FAA aggressively enforced the operating noise limits in 1985 when Stage I airplanes were eliminated from operation, and anticipates a similar aggressive campaign to enforce the Stage 2 regulations. The FAA used the experience gained in 1985 in developing the new regulations.

The specific sanctions for violations of these regulations are set by section 901 of the FAAct; that is, suspension of an operating certificate and a penalty of up to $10,000 for each violation of the regulation. The application of these provisions is included in section 9308(e) of the statute, as quoted above.

Accordingly, the requirements of this final rule will be enforced in accordance with title IX of the FAAct and part 13 of the FAR.

Entry and Nonaddition

NPRM: As addressed in the NPRM, the nonaddition rule, section 9309 of the statute, was effective on November 5, 1990. The intent of the statute, including some of the language of the statute, was retained in proposed § 91.805. The nonaddition rule limits the pool of Stage 2 airplanes over 75,000 pounds that are owned by U.S. persons and eligible to operate in the contiguous United States to the number that existed on November 5, 1990. The rule seeks to protect the interests of U.S. owners of those airplanes on that date, including those that are leased for operation outside the United States. The NPRM echoed many of the statutory provisions and stated them as proposed conditions for operation of Stage 2 airplanes in the contiguous United States on and after November 5, 1990.

The NPRM set out definitions for the words "owner" and "imported," with the latter tied to a change in ownership of a Stage 2 airplane from a non-U.S. person to a U.S. person. Importation was tied to U.S. ownership because the FAA has no way of determining the acquisition date of a foreign-owned Stage 2 airplane to decide whether it may be allowed to operate in the contiguous United States.

Proposed § 91.805 also sought to limit the operation of Stage 2 airplanes leased from non-U.S. persons. If U.S. operators were permitted to lease Stage 2 airplanes from foreign persons and operate them in the United States, the purposes of the nonaddition rule would be thwarted and noise from Stage 2 airplanes in the United States could increase dramatically.

Comment: Some commenters express concern with the FAA's interpretation of the statutory provisions regarding the return of leased Stage 2 airplanes. A commenter is concerned that a statement in the NPRM preamble regarding the return of leased airplanes interprets the statute to require that, to be eligible to return, the airplane must have been leased to a foreign air carrier on November 5, 1990. Another commenter requests clarification of the rule's provision with respect to leasing of U.S.-owned airplanes to foreign operators after November 5, 1990.

Final Rule: The FAA agrees with the comment that the language of the preamble of the NPRM inadvertently overstated the statute with regard to the November 5, 1990, date. The nonaddition rule uses November 5, 1990, as the test date only for ownership of a Stage 2 airplane and does not require that a U.S.-owned Stage 2 airplane had to have been leased to a foreign air carrier on that date to return.

Accordingly, the FAA interprets the statute and the regulation as allowing for the lease of U.S.-owned Stage 2 airplanes to foreign air carriers at any time. To gain valid return privileges under the regulation, the airplane must return to the United States within 6 months of the expiration of a foreign lease. This provision does not prevent subsequent leasing of an airplane to other foreign air carriers.

Furthermore, any airplane that is leased to a foreign person is subject to those provisions of §§ 91.861 through 91.867 if the airplane is operated in the contiguous United States.

Comment: An operator requests that the term "importer" be interpreted to include lessors and that the word "purchase" be interpreted to include the term "lease." The operator is concerned that there will not be enough airplanes available for lease if non-U.S. sources are foreclosed.

Final Rule: The FAA will not extend the meaning of the terms "import" and "purchase" to include leasing. To do so would dramatically alter the common understanding of the terms. The effect of such an interpretation would be to alter the intent of the nonaddition rule and allow an unacceptable increase in the level of Stage 2 noise. Proof has not been submitted that there is an insufficient supply of airplanes available from U.S. sources to accommodate leasing interests.

Comment: A commenter requests that the FAA clarify the definition of "importer," including a reference to a provision using the word "owner."

Final Rule: After further consideration, the FAA has decided that it would be clearer to define the term "import." A definition of import is included in the new definitions section (§ 91.851), and the cross reference that caused the confusion is removed.

Comment: Several commenters express concern with the term "foreign air carrier" in the leased airplane return rule. They assert that Congress did not mean to limit the return of leased airplanes to those that are leased to "foreign air carriers" as defined by the FAAct, but that the intent was to include airplanes leased to any foreign operator regardless of whether the operator qualifies as a foreign air carrier.

Final Rule: The FAA agrees that the FAAct definition of "foreign air carrier" is an inappropriate interpretation of the legislative intent. If Congress intended the FAAct meaning, it could have specified that meaning, as it did for other terms under section 9308 of the statute. Since the intent of the statute is to protect U.S. interests that existed on November 5, 1990, there is no apparent reason to limit the return provision to those Stage 2 airplanes that were leased to foreign air carriers that operate into the United States while excluding those that do not conduct such operations. The nature of the operation does not affect the status of the owning U.S. person's interest in its airplane. Accordingly, § 91.855(f)(2) has been revised to include the term *foreign airline*, meaning any foreign person that operates the subject airplane for compensation or hire.

Comment: An operator raises the concern that the NPRM provision that speaks to acquiring airplanes "from any U.S. operator" unnecessarily limits the field of available airplanes.

Final Rule: The FAA agrees that the proposed language regarding acquisitions from other U.S. operators unnecessarily limits the pool of available airplanes. The final rule language of § 91.855(b) has been revised to allow the operation of any U.S.-owned Stage 2 airplane.

Comment: A commenter requests that there be no "grace period" for the noise abatement retrofit equipment exemptions allowed by the statute.

Final Rule: The FAA agrees. Section 9309(b) of the statute does not allow for any grace period for noise abatement retrofit exemptions and the FAA has not taken any action inconsistent with this interpretation.

Comment: An operator requests that there be a limited exception to the nonaddition rule to allow for the transfer of airplanes from a U.S. carrier that is involved in Chapter 11 proceedings to another U.S. carrier. This commenter reads the proposed rule to prohibit such transfers because it would increase the base level of the acquiring carrier.

Final Rule: No exception to the nonaddition rule is necessary to protect the transfer of U.S.-owned airplanes between a U.S. air carrier acting under bankruptcy protection and any other U.S. operator. It is possible that the proposed rule caused some confusion on this point. Final rule § 91.855(b) states that any U.S.-owned airplane may be operated in the contiguous United States and puts no restriction on transfers between U.S. persons. The final rule language of § 91.863 has also been revised to clarify the fact that transfers of airplanes may occur and be accounted for in the transferring and acquiring operators' base levels.

Comment: A commenter desires a clarification of the status of contractual assignments made before November 5, 1990.

Final Rule: If a U.S. person holds a valid contractual assignment for the purchase or lease of a Stage 2 airplane from a foreign person, and that assignment was made before November 5, 1990, the FAA will consider the U.S. person to be the owner of the airplane on November 5, 1990, for the purposes of this rule. Contractual assignments made by foreign persons after November 5, 1990, are valid only if the Stage 2 airplane is restricted to operations outside the contiguous United States. If, on November 5, 1990, the owner was a foreign person, then any change of ownership after that time would constitute an importation of a Stage 2 airplane by the acquiring U.S. person. Contractual assignments between U.S. persons are not affected because the transfer of airplanes between U.S. persons is not prohibited.

Comment: A commenter requests that the FAA interpret the term "contract executed" in section 9309(a)(2) of the statute to include executory contracts.

Final Rule: In the NPRM, the FAA indicated that it intended the terms "contract" and "written contract executed" to have the standard legal interpretation and meanings as accepted in the field of contract law. The meaning of the term "executed contract" is one that is complete, while an "executory contract" is one that is incomplete. The FAA will not adopt an interpretation that makes the word "incomplete" mean "complete."

The FAA interprets the inclusion of this provision in the statute as intended to cover a situation under which, on November 5, 1990, the contract for the purchase of an aircraft was complete except, perhaps, for actual delivery or

presence of the airplane in the United States. Any other circumstances concerning an executory contract for the purchase of a Stage 2 airplane that a contracting party thinks meet the intent of the nonaddition rule will be considered on an individual basis, as are all questions of ownership under part 47 of the FAR. The final rule continues to reflect the terms used in the statute and the standard legal interpretation anticipated in the NPRM.

Comment: An aircraft leasing organization reads the proposed rule as containing an ambiguity between proposed §§ 91.805(a)(5)(ii) and 91.805(a)(6). The commenter notes that if an airplane was validly purchased before November 5, 1990, and is leased to a foreign carrier, it is unclear whether the 6-month limit on returns of foreign-leased airplanes applies, or whether the unlimited return provision for purchased airplanes applies. The situation is complicated by the statute's use of the term "foreign air carrier."

Final Rule: An airplane leased by its U.S. owner to a foreign airline would have to be returned within 6 months of the end of the foreign lease to return validly under the rule. The change in the final rule from the term "foreign air carrier" to "foreign airline" means that only two situations are possible: A Stage 2 airplane that is leased to a foreign airline on or after November 5, 1990; or a Stage 2 airplane that is owned by a U.S. person, is not in the contiguous United States, and is not leased to a foreign airline. Where a Stage 2 airplane is or has been leased to a foreign airline, it has 6 months from the end of the lease to return; where a Stage 2 airplane has not been so leased, it may return at any time. Including the term "foreign airline" rather than "foreign air carrier" in the return provision for leased airplanes in the final rule removes any remaining confusion. When returned, leased airplanes are subject to the provisions of § 91.865.

Regarding the leasing of foreign airplanes, § 91.855(c) includes a provision that allows the operation of foreign-owned Stage 2 airplanes in the contiguous United States for the term of any lease that was legally binding before September 25, 1991, including any extensions allowed by the lease agreement in effect on that date. This is a clarification from the NPRM, which did not specify foreign-leased airplanes as one of the provisions of the operating rule.

Comment: A foreign airplane lessor interprets proposed § 91.805 to allow for the repeated short-term leases of foreign airplanes to U.S. operators. Some of these leases are for as short a time as 4 months. The commenter reads proposed § 91.805(a)(2) to mean that as long as the U.S. operator's base level included the leased Stage 2 airplanes when the base level was established, then subsequent leases are allowed (either of the same airplanes or other Stage 2 airplanes of that type).

Final Rule: The interpretation suggested by the commenter cannot be sustained under the nonaddition rule. Proposed § 91.805(a)(2) cannot fairly be read to allow the operation of foreign-owned airplanes once they leave the fleet of the leasing U.S. operator. Although the addition of foreign-owned leased airplanes to an operator's fleet is not an "import" under these regulations, it constitutes an increase in Stage 2 airplane operations in the contiguous United States by a method not provided for in the statute. The goal of the nonaddition rule was to halt the proliferation of Stage 2 airplane noise in the contiguous United States without unnecessarily damaging the interests of U.S. owners. Restricting the subsequent leasing of foreign-owned Stage 2 airplanes once the term of the original lease expires meets both concerns of the nonaddition provisions of the statute.

The commenter is correct that the provisions of proposed § 91.805(a) are to be read in the disjunctive, i.e., that an operator need satisfy only one of the provisions to operate a Stage 2 airplane. However, the intent of the statute and these regulations does not support the commenter's interpretation that proposed § 91.805(a)(2) applies to its circumstances and allows the subsequent lease of foreign-owned airplanes. The language of proposed § 91.805(a)(2) appears to be the source of some confusion. Section 91.855(b) of the final rule is stated in terms of U.S.-owned airplanes. Together with § 91.855(c), the two provisions account for all of the airplanes meant to be covered by proposed § 91.805(a)(2). The inclusion of § 91.855(c) in the final rule makes it clear that foreign-owned airplanes leased to U.S. operators are covered under that provision, and may not be read into other provisions of § 91.855.

Modification and Maintenance

NPRM: The nonaddition rule, section 9309 of the statute, provides for the operation of otherwise prohibited imported Stage 2 airplanes in the contiguous United States if those airplanes are operated for the purpose of obtaining modifications to meet Stage 3 noise levels. The FAA intends that such operations will be the subject of special flight authorizations requested pursuant to § 91.859 and a Special Federal Aviation Regulation (SFAR). Until the SFAR is adopted, anyone wishing to take advantage of the statutory exemption may do so by applying to the Administrator for an exemption as provided in 14 CFR part 11. As it has for all previous authorizations regarding modifications to meet noise criteria, the FAA intends to require that applicants for special flight authorizations or exemptions provide proof that such modifications will be made. Generally, this has taken the form of a contract for noise abatement retrofit equipment that has been certificated for the subject airplane.

Final Rule: This exemption was proposed as § 91.805(c). No comments were received regarding this provision, and the exemption is adopted in the final rule as § 91.859.

NPRM: Although not explicitly stated, proposed § 91.805 would preclude the operation of a Stage 2 airplane into the contiguous United States for maintenance if the airplane did not meet one of the explicit provisions of that section. This would preclude the operation of Stage 2 airplanes imported into a point outside the contiguous United States from operating into the contiguous United States for maintenance.

Comment: Several commenters note that an interpretation of the statute that prohibits non-revenue operations for maintenance would have serious adverse consequences both for affected operators and the repair industry in the United States. A commenter notes that operations for modifications to Stage 3 may also call for other modifications or maintenance, and should be provided for in the regulations.

Final Rule: Upon further review, the FAA interprets the statute to allow the operation in the contiguous United States of an airplane imported into the noncontiguous United States after November 5, 1990, for purposes of maintenance. Section 9308(d) of the statute indicates that Stage 2 airplanes imported into the noncontiguous United States after November 5, 1990, may not be used to provide air transportation into the contiguous United States. Congress also specified that the definition of air transportation to be used is the one that exists in the FAAct. As long as maintenance flights are conducted on a ferry (non-revenue) basis, they are not flights that provide air transportation. This situation is provided for in § 91.857(b) of the final rule. Maintenance flights will not be allowed after the statutory prohibition of December 31, 1999.

Base Level

NPRM: The NPRM proposed a concept referred to as a "base level" for operators of Stage 2 airplanes. The NPRM proposed that the base level would be the number of owned or leased Stage 2 airplanes that were listed on an operator's operations specifications 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 airline, as defined in the statute and proposed § 91.805(a)(5), and those Stage 2 airplanes purchased by an eligible entity, as defined in the statute and proposed § 91.805(a)(6).

The NPRM also proposed that base level of foreign air carriers would be the total number of Stage 2 operations it conducted into the contiguous United States during calendar year 1990.

Comment: Several commenters recommend that the final rule provide for Stage 2 airplanes purchased or leased during 1990 to be included in the base level of the acquiring operator. They point out that, in certain instances, purchased airplanes were not formally added to the operations specifications by year-end even though possession of those airplanes was taken in 1990.

Final Rule: To accommodate this concern, the final rule extends the cutoff date for determining the single day on which an operator determines its Stage 2 base level to July 1, 1991. This provides time for operators who contracted for the acquisition of Stage 2 airplanes near the date of the statute to have included such airplanes on its operations specifications.

Comment: Some commenters express concern that the 1-year period for selecting the base level day in the NPRM could provide a windfall, and recommend November 5, 1990, as the one date to establish base levels.

Final Rule: The FAA does not agree with the recommendation that November 5, 1990, be the date for establishing a base level; it would not take into account the effects of the Gulf War or peak season increases of many carriers' fleets each year. Any windfall effect of allowing an operator to choose the date will be minimal.

Comment: Many commenters perceive an inequity in basing the proposed phaseout on airplanes for U.S. operators and operations for foreign air carriers.

Final Rule: After further consideration, the FAA has decided that foreign operators' U.S. operations specifications could be used as the basis for gauging the number of airplanes operated by a foreign air carrier. Accordingly, the final rule provides for an airplane-based transition for both U.S. operators and foreign air carriers.

Comment: A commenter suggests that the final rule include special provisions for foreign air carriers operating Stage 2 airplanes to the U.S. only part of the year in which the base level is to be determined.

Final Rule: The FAA does not agree. Basing the final rule compliance on airplanes rather than operations for all U.S. operators and foreign air carriers provides the same opportunities to foreign air carriers that it does for U.S. operators in similar circumstances. Extending the cutoff date for selecting a base level day to July 1, 1991, also provides additional latitude for growing operators to establish their base levels. Partial-year operations would not cause a different outcome under this system since each operator may choose its own date to establish its base level.

New Entrants

NPRM: The NPRM proposed a compliance alternative for new entrants. By definition, they would not have a base level established between the dates specified from which to reduce. The proposed rule specified a minimum percentage of a new entrant's airplanes that must be operated as Stage 3. This percentage is based on the timing of entry. No provision was offered for foreign new entrants.

Comment: A commenter suggests that new entrants should use the same base level concept as all other operators subject to the proposed phaseout.

Final Rule: The FAA finds it impossible to accommodate this comment. Base level determination is a function of reducing from a starting point established during a time frame at the beginning of the reduction period. New entrants, by definition, did not operate any Stage 2 airplanes during the base level establishment period, and thus cannot have base levels established under the same concept as operators that operated Stage 2 airplanes during that time.

Comment: A commenter recommends that the base level of a U.S. operator that tranfers airplanes to a new entrant be reduced accordingly.

Final Rule: New entrants do not have base level and do not calculate their compliance with regard to that base level. However, if an operator with established base level chooses to transfer airplanes and base level to a new entrant, it may do so in accordance with § 91.863. The new entrant may hold that base level for subsequent sale with the corresponding number of Stage 2 airplanes. New entrants must meet the compliance schedule in § 91.867, without regard to their base level holdings.

Comment: Based on the statute's direction to provide special consideration for new entrants, a commenter recommends that new entrants with only one or two Stage 2 airplanes be exempt from interim compliance requirements, and another commenter recommends an exemption of up to 30 airplanes.

Final Rule: The statute requires that consideration be given to the "impact on new entry into the airline industry." The final rule provides for new entrants to become established and grow using a fleet mix of Stage 2 and Stage 3 airplanes.

The percentages chosen for the new entrant fleet mix are the same as proposed in the NPRM and differ from those required for established operators. The new entrant percentages take into account the difficulties associated with new operations. To encourage increased competition, new entrants are allowed slightly more fleet mix flexibility through 1996.

Comment: Several commenters request that the final rule provide equal treatment for foreign new entrants and U.S. new entrants.

Final Rule: The FAA agrees. Accordingly, the final rule contains equivalent provisions for both foreign and U.S. new entrants.

Mergers

NPRM: The NPRM acknowledged that significant transfers of airplanes may occur during the compliance period, and the FAA solicited comments on how such transactions should be accommodated in the final rule, particularly with regard to base level adjustments.

Comment: Several commenters recommend that, in the event of a cessation of operations, corporate dissolution, or corporate restructuring where assets are sold, base level transfers should also occur to reflect the relative gains and losses of the parties to the airplane transfers.

Final Rule: Section 91.863 of the final rule includes appropriate provisions to accommodate such transactions. The base level transfer provisions afford operators the flexibility to transfer base level with Stage 2 airplanes. The rule accommodates the transfer of any number of Stage 2 airplanes.

Compliance Schedule

NPRM: Proposed § 91.807(d) presented 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 after December 31, 1994, to a level 50 percent below its base level after December 31, 1996, and to a level 75 percent below its base level after December 31, 1998.

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).

Comment: A large number of commenters state that the compliance schedule proposed by the FAA is acceptable. Many other commenters state that the compliance schedule is either too aggressive or too slow. Another commenter expresses concern that the FAA's proposed schedule will severely affect small and economically fragile carriers, especially international air cargo operators. That commenter supports Schedule Four of the NPRM which calls for a 50 percent reduction in Stage 2 operations by December 31, 1996, but does not include a 1994 compliance date.

Final Rule: In this final rule, operators will have the choice of complying with either the phaseout schedule proposed in the NPRM or an alternative that incorporates the addition of Stage 3 airplanes to meet certain fleet mix percentages. This choice of options was selected after careful economic analysis of five alternatives. The FAA finds that the selected schedule, with its two options for compliance, will achieve an appropriate balance between environmental and economic concerns.

Comment: Several commenters state that some carriers may be forced to cut back service if they are unable to meet the compliance schedule and that those cutbacks will greatly affect small communities.

Final Rule: The FAA has concluded that the compliance schedule will not interfere with an operator's decision to provide service to small communities. While the majority of small communities are served by airplanes that are not subject to the Stage 2 reduction requirements, some are served by carriers that operate Stage 2 airplanes covered by this rule, such as DC-9's and Boeing 737's. Development of noise abatement retrofit equipment for many Stage 2 airplanes is ongoing. Currently, certificated noise abatement retrofit equipment is available for DC-9-10 and DC-9-30 airplanes, and the FAA anticipates that this rule will spur further development of noise abatement retrofit equipment. Such equipment for Boeing 737-100 and 737-200 airplanes, assuming no unexpected developments, is expected to be approved within 1 year. In addition, the new provision allowing waivers from interim compliance requirements is designed to account for delays in acquiring such equipment, especially where the delay would affect service to small communities. Finally, most small communities are offered service to connecting hubs by more than one U.S. operator. If service is discontinued by one carrier, the remaining operators would be expected to compete for the discontinued carrier's passengers.

Comment: Regarding the availability of Stage 3 noise abatement retrofit options, some commenters state that an operator's future fleet plans must consider all possible alternatives, and that the availability of Stage 3 noise abatement retrofit equipment could become a major problem.

Final Rule: At this time, certificated noise abatement retrofit equipment is available for several airplane types. Approximately 60% of the Stage 2 fleet has retrofit equipment type certificated to meet Stage 3 standards. Certification for another 30% is expected in the near term. According to manufacturers contacted by the FAA, most airplanes that will be affected by the transition to Stage 3 either have Stage 3 noise abatement retrofit options available now or have such equipment under development. There are more than 2,100 Stage 2 airplanes in the U.S. fleet powered by Pratt & Whitney JT8D engines. Pratt & Whitney is working with airframe manufacturers and others to develop Stage 3 retrofit equipment. As noted above, Stage 3 retrofit equipment is available for two DC-9 series airplanes, and type-certificated equipment is anticipated within the next 12 months for other DC-9 airplanes and Boeing 737-100 and 737-200 series airplanes. Pratt & Whitney anticipates that within 5 years there will be enough equipment to retrofit the worldwide fleet powered by Pratt & Whitney JT8D engines. This figure is well within the time frame established by the compliance schedule in the final rule.

Airplanes that were originally type-certificated to Stage 1 noise levels present more of a challenge in the development of Stage 3 equipment. However, noise abatement retrofit equipment is in development for DC-8 and Boeing 707 airplanes.

Comment: A number of commenters recommend a phaseout of operations rather than airplanes. Commenters concerned about noise levels note that one airplane may conduct a number of operations, thus creating more noise than accounted for as a single event.

Final Rule: The FAA has not adopted this recommendation. While the statute refers to operations rather than numbers of airplanes, in the sense that it prohibits the operation of Stage 2 airplanes in the contiguous United States after 1999, the required transition to an all-Stage 3 fleet can be most readily controlled through changes in each operator's fleet. Monitoring the actual numbers of Stage 2 and Stage 3 operations would greatly increase the FAA's costs and diminish flexibility for operators.

The FAA's decision to promulgate an airplane-based transition is predicated on the expectation that a change in fleet composition will correlate closely with a change in numbers of Stage 2 operations. Indeed, if there is any significant difference, there is reason to think that Stage 2 operations may decline even more quickly than the numbers of Stage 2 airplanes. New Stage 3 airplanes offer significant advantages over older Stage 2 designs, wholly apart from their quieter operation. Therefore, as operators add Stage 3 airplanes to their fleets, these airplanes are likely to have relatively high utilization rates as compared to the operator's older Stage 2 airplanes.

Nevertheless, the FAA intends to monitor the transition period closely, and one of the factors that will be evaluated is whether changes in the airplanes listed on operator's operations specifications parallel changes in operations. If Stage 2 airplane operations do not decline as expected, the FAA may undertake further rulemaking under which operations rather than airplanes would form the basis for determining compliance with the transition.

Transferable Rights

NPRM: The NPRM proposed two fundamentally different approaches for structuring the phaseout of Stage 2 airplanes and asked for comments on each. The first approach, called Option 1, would have been a simple phaseout; each operator of Stage 2 airplanes would have been required to reduce its Stage 2 fleet by specific percentages on or before each of the three interim compliance dates: December 31, 1994, December 31, 1996, and December 31, 1998. As an example, under Option 1, if the largest number of Stage 2 airplanes for which a U.S. operator held operations specifications during any day between January 1, 1990, and December 31, 1990, was 40, the operator would need to reduce the number of Stage 2 airplanes it operates by 10 no later than December 31, 1994. If before that date the operator added to its base level 3 airplanes that were leased to foreign

carriers and one that was purchased, its base level would be increased to 44, and it would be authorized to operate a maximum of 33 Stage 2 airplanes after December 31, 1994.

Proposed Option 2 was a market-based system. In essence, it would have enabled an airline to be given credit for eliminating its Stage 2 airplanes, including modifying them to Stage 3 with noise abatement retrofit equipment, more quickly than required by the schedule. Under Option 2, an operator would have had the choice of reducing its Stage 2 airplanes exactly as described in Option 1 or attempting to acquire additional operating rights from another operator. Under the proposal, such rights would have been available only if the second operator already had exceeded its required reduction. That is, only "extra" reductions could have been transferred. In the above example, if the operator installed noise abatement retrofit equipment on 15 airplanes rather than 10 before 1994, Option 2 would have permitted it to sell 5 Stage 2 rights. If those rights were sold to a second operator that also had forty Stage 2 airplanes at the start, the second operator would have had to convert only 5 airplanes to Stage 3 by 1994. By statute, all Stage 2 airplanes have to be eliminated by December 31, 1999, regardless of the approach taken during the phaseout period. Since no rights would be generated without some operator moving faster than required, and since preexisting Stage 3 purchases or conversions would not count, Option 2 was intended to ensure that noise was still reduced according to the overall schedule. It was also intended to provide individual operators with increased flexibility in meeting the rules' deadlines. As no operator would ever have been forced to purchase an operating right, the FAA stated in the NPRM that transferability would be the preferred option, unless the comments showed that the desirable features of transferability are offset by other compelling public policy concerns.

Comment: A significant number of commenters oppose Option 2 as it was proposed. Their comments generally fall into three categories: (1) Transferable rights perpetuate noise; (2) Option 2 would not work as intended because rights would be hoarded or used as a competitive tool by the "haves" against the "have nots"; or (3) transferable rights are not an answer to the "real" problem, which is an expensive and inflexible phaseout at a time when the industry is in poor financial condition.

Almost without exception, individual commenters, citizen groups, airports, and municipalities favor Option 1. Generally, those comments are based on the premise that the flexibility provided by transferable rights would work to the detriment of airport neighbors by lessening noise reduction. For example, some operators will, for their own reasons, convert to Stage 3 faster than required, even without regulations. If the faster conversion is allowed to generate transferable rights, however, opponents of transferability argue that the extra noise benefit from early conversion will be lost because some other operator will use those rights to extend the operating life of another Stage 2 airplane. A similar common position is that the use of transferable rights could lead to excessive and unfair use of Stage 2 airplanes at the airports served by the purchasers of credits.

Air carriers are not in agreement as to the best method of handling transferable rights, with only the largest carriers supporting Option 2 in its present form. Another carrier favors a limited version of transferable rights, in which an individual carrier could take credits earned before an earlier interim compliance date and use them internally to meet future interim requirements. Under this commenter's proposal, transfers would not be permitted among operators. Airplane owners/lessors favor a market mechanism and transferable rights, but are concerned with who would have those rights—operators/lessees or owners/lessors. The owners/lessors have put forth varying proposals that are intended to protect their interests. Before the NPRM was published, the FAA received a proposal for a single phaseout requirement that would credit all Stage 2 airplanes with 6 operating years (roughly the average of the three phaseout dates). This commenter called its proposal Option 3. Airplane owners would then be able to use all 6 years for each plane and convert fully to Stage 3 about 1997, or they could retire or convert some airplanes early and sell or use the remaining operating rights for other airplanes. The key element of this proposal was that owners rather than operators would have these rights and the benefits of selling them. A write-in campaign was organized among investors in airplane leasing programs. As a result, the docket contains numerous postcards favoring this proposal.

Subsequently, the commenter that proposed Option 3 joined with other airplane lessors and several carriers in a different proposal. A joint comment submission from owners, lessors, a financial institution, and carriers (the "joint submission") reemphasized flexibility as the goal, and included three basic elements: (1) Transferable rights to be created for early phaseout of Stage 2 airplanes, using a system of operating years similar to the original commenter's proposal, but with rights accruing to operators; (2) additional credit for early acquisitions of Stage 3 airplanes, such that a carrier that buys a Stage 3 airplane in 1993 rather than 1994 would earn a transferable right worth 1 operating year, which could be sold or used to support 1 extra year of operation for a Stage 2 airplane; and (3) limited additional transferable rights for owners. While an operator that converts to Stage 3 earlier than required would get 1 year's credit for each year prior to the deadline, nonoperator owners that install noise abatement retrofit equipment or retire their Stage 2 airplanes early would earn a maximum of 2 credit years for the conversion.

The joint submission thus raises additional issues that go beyond the scope of transferable rights: Whether non-operators should have rights or duties during the compliance period and whether adding new Stage 3 airplanes should accrue additional credit. These other issues are addressed below.

Final Rule: The FAA has decided not to adopt Option 2 because the comments that it generated contained substantial opposition to this option and very little support. The FAA included Option 2 in the NPRM with the view toward providing flexibility and facilitating compliance with the proposed phaseout, particularly for those airlines with limited current financial resources (56 FR 8633). However, no currently operating airline facing such circumstances supports Option 2 as proposed.

The FAA is aware of the joint submission request for additional flexibility. The request to permit a fleet mix method of compliance has been incorporated in the final rule and is discussed elsewhere in this document.

The FAA is unwilling to accept the joint submission request to switch from a reduction method based on the number of Stage 2 airplanes eliminated to one based primarily on the year of elimination. Under this proposal, an airline would be free to designate each of its airplanes as scheduled for reduction in a particular year, with credits to be generated for eliminating a particular Stage 2 airplane or adding an extra Stage 3 airplane earlier than the operator's chosen schedule date. For example, if an operator's maximum number of Stage 2 airplanes on any one day during January 1, 1990, through July

1, 1991, was 200, to comply with the phaseout option, the operator would designate 50 airplanes to be phased out in 1994, 50 in 1996, and 50 in 1998.

Thus, if the operator eliminated the 50 airplanes designated for 1994 in that year, it would be in compliance but would generate no credits. If the operator instead eliminated the 50 airplanes designated for 1999 elimination, the operator would earn 250 operating years of credits, 50 each for 1995, 1996, 1997, 1998, and 1999. The joint submission contains a similar credit-year proposal for operators that choose to comply with the fleet mix option. Under the joint submission proposal, these credit-years could be used internally or sold to others. The problem is that the same number of airplanes, 50, would be eliminated in 1994, and it would be solely up to the operator as to whether the action constituted an "early" reduction.

The proposal for airplane owners to gain credits in addition to those given to operators poses a somewhat different problem. The joint submission asks that the rule give 2 years credit for each leased Stage 2 airplane eliminated or modified to meet Stage 3 standards by a non-operator owner. These credits would be in addition to those accruing to the operator. As a result, leased airplanes would be counted twice for the purpose of credits when they are eliminated or converted to Stage 3, while airplanes operated by their owners would count only once. The FAA considers this approach inequitable and discriminatory. In addition, it would lead to an unacceptable perpetuation of Stage 2 airplane noise, inconsistent with the reduction mandated by the statute.

Accordingly, the final rule allows an operator to choose between a modified version of Option 1 (§ 91.865(b)) and a fleet mix as an alternative method of compliance (§ 91.865(d)). The final rule also contains one aspect of Option 2: Operators that exceed the requirements on an interim compliance date will be authorized to carry forward the extra compliance to a later interim compliance date. These credits may be used by the operator at a subsequent interim compliance date, but the credits may not be transferred to other operators.

The FAA also recognizes that the financial condition of much of the airline industry means that it may be difficult for some individual operators to comply with the interim compliance schedule. Therefore, as discussed in the waiver section, waivers from interim compliance requirements will be granted in specific cases where there is an adequate showing that compliance is financially onerous, physically impossible, technologically infeasible, or that it would have an adverse effect on competition or service to small communities. A system of waivers from interim compliance requirements should reduce substantially the regulatory burden of this rule and should meet the needs of operators for flexibility. At the same time, this waiver system is able to respond to the requests of airports and their neighbors that there be no broad exemption from the compliance requirements. Waivers should also reduce concerns that the transfer of operating rights could shift the noise burden from one section of the country to another, or cause an anticompetitive transfer of resources from the "have nots" to the "haves."

Phasein of Stage 3 Airplanes as an Alternative to the Phaseout of Stage 2 Airplanes

NPRM: The FAA discussed an alternative that would allow operators to meet interim goals through increases in Stage 3 airplanes as well as reductions in Stage 2 airplanes.

Comment: Several commenters favor the adoption of a phasein of Stage 3 airplanes rather than a phaseout of Stage 2 airplanes. These commenters claim that this approach would not only enable carriers to increase their fleet capacity by giving credit for the acquisition of Stage 3 airplanes, but that this is also the intent of the statute. Some carriers claim they will face additional economic hardship if they are unable to receive credit for adding Stage 3 capacity to their fleets. The joint submission favors this fleet mix approach and presents a percentage-based schedule for compliance.

Some airport authorities express partial support for this approach because they claim that the phaseout of Stage 2 airplanes does not address situations at individual airports and that service to smaller communities might be affected.

Similarly, some airport authorities and associations support the concept of a fleet mix by noting that much of the conversion depends on the availability of noise abatement retrofit equipment. These commenters claim that the NPRM overestimates the availability of such equipment, making the financial estimates unrealistic. Many commenters express concern that this approach would add rather than reduce noise, and a carrier comments that such an approach would provide no benefit for small carriers that have no Stage 3 airplanes.

Final Rule: The FAA has decided that the current financial condition of the industry warrants the adoption of a final rule that allows each operator the flexibility to choose to reduce the number of airplanes in its base level by a specified percentage, as was proposed in the NPRM, or to acquire and/or reduce airplanes as necessary to achieve a fleet mix of Stage 2 and Stage 3 airplanes that meets the percentages given in the regulation.

To maximize flexibility, operators are allowed to choose the method that best suits its circumstances at each compliance date. The schedule for an operator choosing to eliminate Stage 2 airplanes is the same as that proposed in the NPRM: 25 percent reduction by the end of 1994, 50 percent reduction by the end of 1996, and 75 percent reduction by the end of 1998.

The schedule for an operator that chooses the fleet mix option is based on the comments and considerable analysis of the costs and benefits associated with fleet mix percentages on the compliance dates. The FAA considered the equipment delivery positions of many operators, the current availability of noise abatement retrofit equipment and the status of such equipment under development, projected growth of operators, financial resources of operators, and the effect on competition in the industry. These are discussed more fully elsewhere in this document. The schedule requires that operators choosing this option achieve a fleet mix that includes at least 55 percent Stage 3 airplanes after December 31, 1994, 65 percent Stage 3 airplanes after December 31, 1996, and 75 percent Stage 3 airplanes after December 31, 1998.

The Stage 2 reductions from base level and the fleet mix options have one fundamental difference. Base level is not relevant to the fleet mix method. As such, the final rule incorporates a provision indicating that the FAA will scrutinize transactions involving transfers of base level to determine whether they have been accomplished solely to show compliance with § 91.865. While the transactions themselves would never be at issue, the transactions will not be valid for compliance if they reflect no real increase or reduction of Stage 2 airplanes by the parties to the transactions. An example of the situations anticipated by this provision is set forth in the section-by-section analysis of § 91.863(d).

The final rule also incorporates the request by some operators to allow additional compliance at the earlier compliance date to count as compliance later. This carry-forward compliance credit can be accrued by operators that

choose to achieve compliance by phasing out Stage 2 airplanes. Later use of carry-forward compliance credit is discussed in full in the section-by-section analysis of § 91.869.

The FAA has not adopted the requested system under which Stage 2 elimination would be based on airplane life-years of credit, or the system that accrues extra credit based on the year of elimination. Those concepts are addressed more fully in the disposition of comments on transferable rights in this document.

International Issues

NPRM: The NPRM preamble includes foreign air carriers in the section-by-section discussion of the proposed rule language concerning base level and compliance schedules.

Most of the comments received on the international issues focus on differences between a resolution adopted by the International Civil Aviation Organization (ICAO) and the proposed rule.

Comment: ICAO encourages member States to begin Stage 2 phaseouts no sooner than April 1, 1995.

Final Rule: The U.S. implementation of a compliance schedule must begin by statute on the date of enactment, November 5, 1990. However, the first compliance date has been set as December 31, 1994, only 3 months before the ICAO suggestion.

Comment: ICAO urges member States to set final compliance dates no earlier than April 1, 2002.

Final Rule: The U.S. final compliance date of December 31, 1999, is mandated by section 9308 of the statute and is so reflected in the final rule.

Comment: ICAO encourages exempting wide-body airplanes with high bypass ratio engines from the interim compliance schedule.

Final Rule: The statute makes no provision for such exemptions and the final rule treats all Stage 2 airplanes over 75,000 pounds as equal.

Comment: ICAO uses an airplane life cycle of 25 years as the standard for Stage 2 airplane retirement.

Final Rule: While the FAA uses the 25-year useful life standard in its economic analysis, it considers the chronological age of an airplane to be an inappropriate standard for elimination. The decision as to which airplanes an operator removes from service in order to comply with this rule is solely that of the individual operator.

Comment: Several comments from foreign airline representatives request that foreign air carrier compliance be based on airplanes rather than operations.

Final Rule: After review of these comments and verification of enforcement considerations, the final rule reflects this change. The FAA has determined that a reduction of foreign Stage 2 airplanes is feasible by removing them from foreign air carriers' U.S. operations specifications.

Comment: Several commenters focus on the need for consistency with the Stage 2 reduction policies of ICAO and general agreement with the Chicago Convention. An international airline association, individual airlines, airport operators, and aviation regulatory authorities all refer to specific terms of ICAO Resolution A28–3, which was ratified on October 26, 1990.

Final Rule: The FAA recognizes the importance of a worldwide policy and the efforts of ICAO. The FAA has determined that by basing the compliance on airplanes, rather than operations, variations between the U.S. and ICAO policies will be minimized. The FAA does not find that the other differences can be accommodated under the statute.

Comment: A commenter proposes that the final rule should exempt foreign operations from interim compliance, on the presumption that the noise benefits associated with the elimination of a relatively low number of foreign operations do not justify the economic costs to the foreign operators.

Final Rule: The FAA disagrees. Section 9308 of the statute requires that a compliance schedule be established to achieve the prohibition of section 9308(a) 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 . . . .

Further, because foreign operations are concentrated at a limited number of U.S. airports, noise benefits from reduced foreign operations on the interim compliance dates will be considerable for nearby communities.

Comment: Several comments were received regarding the NPRM proposal that foreign operators with two or fewer Stage 2 airplanes on U.S. operations specifications be exempt from the interim compliance requirements. A commenter states that there is no basis for providing foreign air carriers with privileges not provided to U.S. operators. Also, the commenter explains that the two or fewer airplane measure is inconsistent with the NPRM approach that bases the Stage 2 phaseout for foreign carriers on the number of operations conducted. Another commenter suggests that the FAA expand the exemption from the interim compliance requirements for all foreign operators that had five or fewer Stage 2 airplanes, rather than the two airplanes proposed. This commenter states that by changing the cutoff point under this exemption from two airplanes to five, the public interest objectives of preserving economically beneficial international air service and avoiding undue restriction of the competitive service offered by small- and medium-sized international carriers can be achieved to an even greater degree. Another commenter suggests that an alternative be added that would also exempt an operator from the interim compliance requirements whenever its operations are limited to no more than one daily round trip flight. The commenter states that seven weekly operations could in fact produce much less noise than would multi-frequency operations conducted with just two airplanes in, for example, a transborder market.

Final Rule: As stated previously, the compliance schedule for U.S. operators and foreign air carriers will be based on airplanes; the provision exempting foreign operators with two or fewer airplanes is no longer applicable. In the final rule, the compliance schedule and the airplane-based approach spread the burden among all operators and provide for continuing noise abatement.

Comment: Many commenters request that the waiver from the final compliance date be extended to include foreign air carriers. A commenter states that the foreign waiver issue, as handled in the NPRM, is in clear contradiction to the ICAO Chicago Convention, Articles 11 and 15. This commenter acknowledges that U.S. legislative action may be required to extend waivers from the final compliance date to foreign operators. Community groups support denial of waivers from the December 31, 1999, deadline for foreign air carriers.

Final Rule: Waivers from the final compliance date are limited to U.S. air carriers by the statute. As to the issue of U.S. international obligations, the FAA recognizes the concerns raised by commenters concerning various provisions of this rule. It is the intention of the United States Government to resolve these concerns in a manner consistent with the international obligations of the United States.

The final rule allows foreign air carriers to petition for a waiver from any interim compliance requirement. Such petitions would have to be accompanied by the same financial or

other supporting data that would be required of a U.S. air carrier.

Owner-based Compliance Versus Operator-based Compliance

NPRM: In the proposed rule, the FAA acknowledged that unsolicited comments were received before the publication of the NPRM, including a request from airplane lessors that the FAA protect owners' interests during the phaseout. Specifically, they express concern that focusing the phaseout methodology on the operators of Stage 2 airplanes rather than on owners could lead to results they consider inequitable. The FAA asked for comments on the appropriate roles and responsibilities for operators and lessors of leased airplanes.

Comment: The unsolicited comments contain the Option 3 proposal, explained above in the transferable rights comment disposition, which many commenters refer to as if it had been part of the proposed rule. A postcard campaign to the docket in support of Option 3 was initiated during the comment period. Later in the comment period, Option 3 was supplanted by a joint submission from 13 parties, including the original proposers of Option 3. The new submission significantly modified the original proposal and is discussed below.

Many of the commenters suggest that the operator-based approach is too limited and is inherently unfair to owners or lessors. These commenters assert that not allowing the owners/lessors of airplanes to have a role in the compliance process would have a negative impact on the economic health and competitiveness of those operators that lease large percentages of their fleets. These same commenters also suggest that allowing the operators to make the decisions concerning which airplanes to eliminate puts the leasing companies in the position of having their business destiny in the hands of others. Some commenters express concern that the economic analysis in the NPRM did not include the economic impact of the proposed phaseout on the leasing industry. The non-operator commenters contend that owners/lessors should receive the same consideration as operators in the final rule, and that a final rule cannot be legally issued unless the FAA has ensured that it is equitable.

Some comments propose that the leasing companies and owners—and not the operators—be the parties exclusively responsible for compliance with the statute and the rule because their interests will not otherwise be protected. They contend that operators merely perform the mechanical function of operating the airplane and that the operators have no legal obligation to purchase and install noise abatement retrofit equipment on leased airplanes.

Comments were also received supporting the concept of operator-based compliance. Several commenters state that the operators should be solely responsible for compliance because the statute specifically refers to the operations of airplanes. These commenters assert that the owners/lessors will be able to protect their interests during the compliance period. They are also not persuaded that Option 3 would, in fact, provide the stated benefits or that it can be administered readily. A commenter specifically states that leasing companies should receive no other benefits from this rulemaking that would further increase the operating costs of carriers.

The joint submission asserts that the FAA violated section 9308(c) of the statute, which requires the FAA to consider competition and the ability to achieve capacity growth, by ignoring the existence and interests of the leasing industry. It asserts that continuing the current level of competition in the airline industry depends on the existence of a strong, healthy leasing industry. These commenters also assert that because the FAA had failed to consider the leasing industry, the economic analysis was "fatally flawed" and must be substantially revised before the final rule is issued. They propose that a limited non-operator credit system be included in the final rule. Such a system would allow non-operator owners to generate a limited number of credits for Stage 2 airplanes registered in their name that they certify to the FAA have been converted to meet Stage 3 requirements.

Final Rule: The final rule specifies that operators are the parties responsible for complying with the statute and the regulation. This decision is based on the FAA's interpretation of the statute and the history of part 91 and other FAA rules.

In setting the prohibition on the operation of Stage 2 airplanes, the statute specifically focuses on the operation by any person rather than on the ownership of an airplane. Nowhere does the statute prohibit the ownership of Stage 2 airplanes nor would such action be consistent with the underlying purpose of the statute—the lessening of noise through the gradual elimination of Stage 2 operations. The final rule language tracks the statute by regulating Stage 2 operators.

The final rule language is also consistent with the manner in which the FAA has handled all its rules dealing with the operations of aircraft. Such rules are imposed on the operator of the aircraft rather than the owner for several reasons. First, the FAA has a direct relationship and regular contact with the operator. Second, the operator is an easily defined entity. Both of these facts support the third reason for adoption of an operator-based rule which is the enforceability of the rule. Airplane ownership can be a highly complex financial arrangement involving individuals, groups of individuals, or corporations with which the FAA has little or no regular contact, and over which the FAA has limited direct authority. Finally, there would be additional costs for monitoring a complex, non-operator rule given the fact that there would be a significantly larger pool of individuals subject to the rule.

Another basis for the FAA's decision not to adopt an owner-based final rule is the questions resulting from the lack of information in this area. The FAA is not prepared to determine who is the owner for purposes of this rule if there is a dispute between parties. Furthermore, it is practically impossible for the FAA to verify from publicly available or commenter-provided information the economic harm that the commenters allege will result from this operator-based rule. It also is practically impossible for the FAA to determine the owner/investor configuration for each airplane, know their financial circumstances, and determine how those financial circumstances would be affected.

The FAA is also convinced that the symbiotic relationship between owners and operators will act to balance the interests of each in the negotiation of airplane leases. The nonaddition rule prohibition against new leases of foreign-owned Stage 2 airplanes also protects the market for U.S.-owned and leased airplanes.

Finally, the FAA is concerned that if such a rule were adopted with the above enforcement weaknesses, local airports would question its efficacy and take more aggressive steps to impose their own local restrictions. In addition, since such local rules would be directed toward operators, it would ensure significant differences between federal and local rules and defeat any alleged protection to the owners offered by the adoption of such a final rule on a federal level.

Waivers

Comments concerning waivers fell into two categories. Several commenters request that the final rule include

provisions for waivers from the interim compliance requirements of the phaseout schedule. Other comments concerned the FAA's statements in the preamble regarding waivers from the compliance date that are provided for by the statute. The two waiver provisions are discussed separately below.

Waivers From Interim Compliance Requirements

NPRM: The proposed rule did not include any separate provisions for waivers from the interim compliance requirements.

Comment: Several commenters note that it is unrealistic to presume that there will not be circumstances that prevent an operator from complying fully with an interim compliance requirement. Commenters request that a separate provision be included in the final rule and that the criteria under which such waivers will be granted be stated clearly.

Final Rule: The FAA agrees. The lack of a separate waiver provision in the NPRM did not mean that the FAA did not foresee circumstances under which relief from the interim requirements might be in the public interest. The FAA is persuaded, however, that orderly compliance with this rule warrants its own waiver procedure with application and approved criteria defined in advance. Section 91.871 has been added to include such provisions.

The existence of a waiver provision should not be viewed as an automatic entitlement to relief from an interim compliance requirement. Waivers will be granted only after consideration of these and other criteria: (1) The balance sheet and cash flow position of the applicant; (2) the current composition of the applicant's fleet; (3) the applicant's plans and activities for fleet modification, including its good faith efforts to comply with the transition rules; (4) the applicant's delivery position with regard to new airplanes or noise abatement equipment; and (5) the effect on competition if such a waiver is granted. It is anticipated that waivers will be granted if an operator is able to show that compliance with the interim requirement is financially onerous given its economic status when compliance is due, physically impossible because of equipment availability and delivery schedules, infeasible because noise reduction technology has not been certificated for the airplanes under consideration for a waiver, or that it would have an adverse effect on competition or on service to small communities.

All applications will be considered under the standards of good faith efforts of the operator to achieve compliance with the interim requirements and whether a grant of the waiver would be in the public interest. Interim compliance waivers will be granted only for the period of time necessary for compliance by the individual operator, and in no case beyond the next interim compliance date. To gain waiver relief from a later interim compliance date, an operator would have to reapply.

Comment: Many groups of noise-affected citizens request that any application for waivers be made subject to public process.

Final Rule: The FAA agrees. The process of granting waivers is an integral part of rulemaking and the participation of the public is inherent. To this end, the final rule contains a provision that a notice of an application for a waiver from any interim compliance requirement will be published in the **Federal Register** and be open for public comment. Unless the Secretary determines otherwise, a minimum of 14 days will be given for public comment.

Waivers from the Final Compliance Date

NPRM: The NPRM provided for waivers from the final compliance date in accordance with section 9308(b) of the statute. The statute limits the availability of such waivers to U.S. air carriers, and sets out criteria to be followed, including the requirement that any grant of a waiver must be in the public interest. The statute also requires that in evaluating a request for a waiver from the final compliance date, the Secretary consider the effect of granting a waiver on competition in the air carrier industry and on small community air service. Finally, the statute provides for the conditions and time period under which a U.S. air carrier may file for such a waiver.

Comment: Several commenters object to the provision allowing waivers from the final compliance date, and state that it should be deleted and perhaps replaced with some other incentive. Commenters were in general agreement that some standards for the waivers should be defined, and some request a definition of public interest.

An operator reads the existence of the waiver provision in the statute to mean that waivers should be automatic if the statutory criteria are met. Another commenter considers the FAA's interpretation too restrictive, indicating that the waiver should be automatic and negotiable with the FAA. An organization of operators states that the waiver provision should not go beyond the words of the statute. Some members of Congress state that the NPRM's expectation that waivers will be granted only in exceptional circumstances (as where a carrier indicates that compliance with a final phaseout date would wreak "financial havoc") is contrary to Congressional intent and unnecessarily burdensome.

A group of citizens concerned about airplane noise states that the waiver should be strictly limited, and that to read the statute otherwise would inhibit the effectiveness of any phaseout. Another group states that an unrestricted 4-year waiver from a 7-year phaseout is excessive. The noise-affected public generally urges the FAA to caution operators that the December 31, 1999, phaseout date remains as the statutory mandate, and that the operators should not tailor their plans on the basis of a presumed waiver and an "actual" phaseout date of 2003. A group is concerned that the problems experienced during the phaseout of Stage 1 airplanes will be repeated, and suggests that every applicant for a waiver be required to submit a cost-benefit analysis to support its request. A locality requests that waiver applicants be held to the same burden of proof imposed on airport operators that wish to impose operating restrictions, which was proposed under a separate rulemaking. Other commenters request that the waiver provision restrict operations at airports with more progressive noise goals, that the number of Stage 2 operations permitted under waivers be restricted, and that the approval of airports served by a carrier seeking a waiver be a condition to a grant. Another commenter suggests that the application date for a waiver be moved to January 1, 1995.

Most of the noise-affected citizens and airports state that the waiver process should be public, with notice of requests for waivers published and up to 180 days provided for public comment.

Final Rule: The waiver from the final compliance date is statutory and must be a part of the final rule. The FAA has not changed its basic position from the NPRM that waivers from the final compliance date will not be automatic. The FAA agrees that operators should be cautioned to plan for the final compliance date; if the Congress did not intend the cessation of Stage 2 operations in the contiguous United States by December 31, 1999, that provision would not appear in the statute. The FAA intends the statutory waiver provision to be a relief valve against unforeseen economic and supply

circumstances to be determined based on the circumstances of the individual operators at the time. "Automatic" waivers cannot provide for unique circumstances. Similarly, the length of a waiver from the final compliance date will be determined by the circumstances of the individual applicant. The December 31, 2003, statutory waiver deadline is an outside limit, not a 4-year extension that has no basis in the individual circumstances that warrant the grant of a waiver.

The FAA agrees that more definitive waiver criteria are needed if compliance is to be effected in an orderly fashion. The statute indicates that a waiver may be granted only if the Secretary finds that a grant would be in the public interest. No attempt will be made to define "public interest" here. The Department of Transportation and the FAA are familiar with the public interest standard as a measure of evaluating a request for an exemption or waiver from many regulations and recognize that a critical component of the standard is based on the circumstances that exist at the time a waiver is requested. The FAA will not at this time attempt to define the economic or logistical circumstances that would affect the public interest standard as it will need to be applied when an air carrier applies for a waiver from the final compliance date.

In considering the requests for waivers from interim compliance requirements, the Secretary was able to identify circumstances under which those waivers would most likely be granted, and the Secretary intends to include similar criteria in considering requests for waivers from the final compliance date. Were wholesale grants of waivers anticipated by the statute, it is doubtful that the statute would so specifically direct the Secretary's attention to the effect of a grant on competition in the industry as one of the two waiver considerations that the Secretary must address, for competition would not be affected if every carrier could get a waiver once the 85 percent threshold were met.

The FAA agrees that, as with waivers from the interim compliance requirements, the public should be notified of an air carrier's application for a waiver from the final compliance date and be given an opportunity to comment. The statute makes no provision, however, for the approval of waivers by any airport served by an individual carrier, nor the imposition of a burden of proof on applicants similar to that proposed elsewhere for airport operators that wish to adopt operating restrictions. The FAA cannot extend the statute to include such provisions. The commenter that suggests moving the application date for waivers provided no explanation as to how this would facilitate a reduction of Stage 2 airplanes. Moreover, the application date is set by the statute and cannot be changed by the FAA.

Stage 3 Percentage Provision

NPRM: The proposed rule contained a provision that would allow an operator to discontinue compliance with the phaseout requirements once the operator achieved and maintained a fleet that consisted of 85 percent Stage 3 airplanes. That provision was proposed as § 91.805(d)(3).

Comments: An operator states that it does not understand the NPRM provision that addresses the applicability of the rule to operators that have achieved a 85 percent Stage 3 fleet mix. Other commenters contend that the allowance would serve only the largest, financially healthy carriers and allow them to operate as many Stage 2 airplanes as they want as long as a sufficient number of Stage 3 airplanes were added to retain the fleet mix.

Final Rule: This provision is removed from the final rule. It was originally proposed so that no operator that was phasing out Stage 2 airplanes would be forced to phase out more than necessary to meet the statutory requirement to apply for a waiver of the final compliance date. The provision had no time expectation, as thought by the commenting operator.

The adoption of the optional fleet mix method of compliance obviates the need for this provision. For those operators that use the Stage 2 reduction method to comply, the waiver provisions included in the final rule are available to address the circumstances of operators on a case-by-case basis.

Annual Progress Reports

NPRM: The proposed rule required carriers to submit to the FAA annual phaseout progress reports within 45 days after the end of each calendar year. The reports were to include 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 towards compliance with the interim schedule and the final compliance date, and the carrier's current plan to meet the interim compliance schedule and the final compliance date. Similar information would be required from foreign air carriers.

Comment: The commenters' primary concern is the confidentiality of the reports. Many commenters state that the information submitted will be proprietary. These commenters suggest that the reports be held for 48 months and not be subject to Freedom Of Information Act requests or otherwise be made available to the public.

Final Rule: Much of the information required by annual reports is not considered to be proprietary. The FAA will consider specific requests that certain information identified by the operator be held in confidence.

Comment: A commenter suggests that reports be submitted at 6-month intervals rather than annually.

Final Rule: Annual reports are mandated by the statute, and the FAA does not foresee any use for information submitted at 6-month intervals. Additional reports would add to the administrative costs of the rule with no corresponding benefit.

Comment: The commenters generally agree that the information proposed to be submitted in the annual progress reports is appropriate. A commenter states that the FAA requests too much information and that only plans for compliance with the next interim date should be required. This commenter contends that carriers would be precluded from making plans to incorporate new technologies with respect to later compliance dates if the reports are to cover the entire compliance period.

Final Rule: The final rule requires annual reports to include the operator's expected plans for meeting the interim compliance schedule and the final compliance date. The information requested is essential to the effective monitoring of compliance with this rule. It should be understood that the plans can be revised by an operator for any reason at any time. Because the reports will be submitted annually, any changes from previous annual reports that reflect new plans, new availability of technology, or changing circumstances must be incorporated.

Comment: Some airport operators indicate that they would prefer to see an annual report listing the number of operations of Stage 2 airplanes at individual airports rather than the number of Stage 2 airplanes a carrier has in its fleet.

Final Rule: The annual report required by the statute and regulations will be used to show an individual operator's compliance with the phased elimination of its Stage 2 airplanes, not its operation of Stage 2 airplanes at an individual location. The FAA cannot justify the imposition of the cost to operators to

tabulate such information when the FAA has no need for such information.

Discussion of Comments—Regulatory Impact Analysis

NPRM: The NPRM Regulatory Impact Analysis explored the costs and benefits of requiring the operational phaseout of all Stage 2 airplanes by December 31, 1999. It quantified, to the extent practicable, estimated costs and benefits of sections 9308 and 9309 of the statute, and the regulations proposed thereunder, to the private sector, consumers, Federal, State, and local governments. The FAA estimated that the proposed rule would have minimal impact on international trade and small entities.

Costs

Comment: Several commenters, especially air cargo carriers, argue that the 25-year life-cycle used in the economic calculations is too low and not a realistic representation of an airplane's useful life. One commenter argues that cargo airplanes age at a rate two and a half times slower than passenger airplanes due to the reduced number of flight hours per day. This commenter states that cargo carriers use their airplanes less extensively than passenger air carriers. This commenter as well as others suggest that the life of airplanes should be based on usage rather than age.

Final Rule: The FAA retains the 25-year life-cycle in the final rule because it is based on an age profile of existing industry airplanes. In January 1991, the domestic fleet airplane-age profile showed that only 4 percent of air carriers' airplanes exceeded 25 years of age, while the average age was 18 years. The FAA's review of 75 percent of all-cargo carriers' airplanes indicates that the average age is 19 years. Thus, based on those averages, the FAA contends that the 25-year life-cycle is realistic for the purposes of comparison and analysis of the final rule.

However, the FAA is concerned about whether the chosen scenarios would have been different if a 30-year life for airplanes were assumed, and thus has included a cost sensitivity estimate for the 30-year life in the final cost analysis. Based on the fact that some air carriers have been experiencing a shortage of capital, there may by a brief period when the 25-year life cycle assumption would not be appropriate. This situation is expected to pass because the Gulf war has ended and the U.S. economy is recovering from the recent recession. Therefore, while the FAA is concerned about the near-term economic circumstances of the industry, its long-term viability is not expected to be affected.

Comment: A commenter asserts that the cost of the proposed rule is $90 billion. This estimate differs considerably with the FAA's high-end estimate of $5.7 billion. This disparity arises primarily in the estimation of the per-seat airplane cost. This commenter's average per-seat cost for 1990 is $259,000 with a range from $200,000 to $300,000 (the FAA per-seat costs range from $186,000 to $198,000).

Final Rule: The FAA disagrees with the asserted cost. This commenter uses data for airplanes ordered during 1990 to support its argument. Because much of the replacement cost will be incurred later in this decade, the costs of those replacements must be discounted back to the present. This commenter's cost estimate uses no discounting of future costs and reflects the time of airplane delivery. Hence, the price of the airplane includes a compounded inflation rate for the years between the order and delivery. The FAA costs represent the price paid for airplanes delivered in 1988 as inflated to 1990 dollars. This commenter's estimate of $90 billion attributes all of the normal airplane replacement costs to Stage 2 phaseout costs. Approximately two-thirds of this commenter's cost estimate represents normal replacement costs.

Comment: Some commenters want added flexibility from the costs imposed by the compliance schedules as noted in the NPRM.

Several commenters ask for more leniency because of the current poor financial condition of domestic airlines. Some suggest establishing a schedule with built-in slippage or compliance delays.

Final Rule: The final rule allows operators a choice of compliance methods. The final rule takes into consideration benefits to the public and the cost impact on the airline industry's financial health. To provide additional flexibility for carriers, the final rule provides for carry-forward compliance credits and a waiver from interim compliance requirements.

Comment: Several commenters criticize the inclusion of noise abatement retrofit equipment in the Regulatory Impact Analysis because FAA-certificated noise abatement retrofit equipment is currently not available for some airplanes in their fleets. Another commenter points out that noise abatement retrofit equipment creates additional costs resulting from fuel and load penalties.

Final Rule: The FAA expects to certify noise abatement retrofit equipment for most existing Stage 2 airplane models in the near future, thus allowing airlines to meet the requirements of the final rule without replacing airplanes. The FAA views the inclusion of noise abatement retrofit equipment information in the economic analysis as appropriate. When compared to replacing airplanes or airplane engines, the FAA considers hushkit retrofit equipment to be the least costly alternative for Stage 3 conversion. The Regulatory Impact Analysis calculates the cost impact of phasing out Stage 2 airplanes, phasing in Stage 3 airplanes, and the statute. A summary of that analysis is included in this document.

Comment: Some commenters state that the 10 percent discount rate that the FAA uses to calculate the present value of the costs is incorrect. The commenters state that it is not appropriate to use the 10 percent rate when analyzing the costs imposed on the private sector. One commenter stated that using a high (10 percent) discount rate understates the rule cost.

Final Rule: Pursuant to Circular No. A-94 of the Office of Management and Budget (OMB), Federal agencies are required to use a 10 percent discount rate when evaluating costs incurred over time. Agencies must also evaluate a rule's benefits using the same 10 percent discount rate.

Comment: An airline asserts that waivers from the 1999 final compliance date should be automatic if an airline achieves an 85 percent reduction to its Stage 2 baseline fleet. This commenter states that the waiver will reduce costs by eliminating of unnecessary investment decisions.

Final Rule: The FAA's cost analysis assumes that no waivers will be granted, and thus overstates the costs to the extent waivers are given. Waiver applications will be evaluated on an individual basis. To the extent that applicants meet certain criteria, waivers will be granted. The individual circumstances that will be required to obtain a waiver cannot be estimated effectively, and thus cannot be included in the cost analysis.

Benefits

Comment: Many comments addressing the benefits of the proposed rule are of a general nature. Some commenters assert that the proposed rule provides no significant benefits. A commenter states that few people will benefit from the interim compliance schedule. This commenter claims that these benefits are less than the costs of the proposed rule.

The joint submission uses this same argument of limited benefits until 1999

as support for its advocation of a fleet mix alternative. While the joint submission acknowledges that there are benefits for property values, the number of citizens affected by noise, and the possibility of fewer local restrictions, it also insists that under no circumstances do such benefits outweigh the costs associated with the rule.

A commenter states that the realization of certain benefits of an all Stage 3 fleet is dependent upon local government actions to secure proper land use in an airport's vicinity. This commenter recognizes that the FAA can address these benefits but cannot control actions to achieve the economic gains. An air cargo operator recognizes some additional benefits of the Stage 2 phaseout that go beyond airplane replacement or modification, including the elimination of potential exposure to future noise and emissions regulations, deferral of airplane purchases, improved dispatch reliability based on engine reliability, improved equity in a re-engined airplane, and improved payload performance. Several members of Congress comment that a cost-benefit approach based on quantities often discriminates against the environmental concerns. These representatives state that the FAA's calculations underestimate the importance of reduced noise to an airport's neighbors.

Final Rule: In response to wide-ranging comments on the determination of the benefits of the final rule, the FAA notes that Congress, in passing the Airport Noise and Capacity Act of 1990, determined that the overall benefits of the transition to an all Stage 3 fleet by the year 2000 exceed the costs. The FAA quantified the benefits of the rule to its best ability and as practicable as required by OMB. OMB requires under Executive Order 12291 that the FAA provide "a description of the potential benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms."

Comment: A commenter raises specific concerns about the use of property value variation to determine the benefits of the Stage 2 phaseout. This commenter takes issue with the FAA's assertions that for every decibel decrease in airplane noise there is a corresponding one-half percent increase in property values. While this commenter views this inverse relationship as "convenient", they see no basis in fact. Several commenters claim that the property value studies cited are inconclusive. Some discredit the studies as being too old, while others state that a recently conducted study deserved more attention. A commenter representing municipalities states that the highly simplified formula for measurement of changes in real estate values mentioned in the NPRM is not sufficiently grounded in scientifically or economically acceptable methodology to be given significant weight in the implementation of the important national policy under consideration here. Another commenter proposes eliminating all of the estimated benefits resulting from an increase in residential property values quoted in the NPRM preamble. The commenters did not provide an alternative method of calculating a quantitative measure of the expected property value benefits. The FAA is still convinced that the information provided is useful in understanding the effects of the final rule.

Final Rule: The analysis represents an attempt to provide the public and government officials with a nationwide quantitative estimate of some of the expected property value benefits of this final rule over an extended period of time, within the limitations of available data. The FAA acknowledges that property values may not, in the case of specific properties, always increase as noise decreases. This generalized relationship of noise and property values cannot be automatically applied to specific communities around specific airports, where property values may or may not be affected by noise. Each community adjacent to an airport must be studied through market analysis to determine the impact that noise has on property values in the area. It is easily conceivable that being located near an airport would increase certain property values because of the economic stimulus of air commerce. A community's demographics and real estate activity reflect the quantitative measure of real property value.

Comment: Many commenters claim that the FAA's Regulatory Impact Analysis lacks a critical evaluation of the health benefits generated by the final rule. The issue was controversial, with some commenters alleging adverse health effect due to noise while others questioned whether noise degraded health in any way.

Final Rule: With the exception of the potential of noise-induced hearing loss at severe levels of noise exposure, there currently is no sound scientific basis for making adequate risk assessments of the non-auditory health effects of airplane noise in airport environs. Potential non-auditory health consequences of airplane noise exposure which have been alleged include birth defects, low birth weight, psychological problems, cancer, stroke, hypertension, and cardiac disorders such as myocardial infarction and cardiac arrhythmia. The current state of technical knowledge does not support an inference of a direct, quantitative relationship between airplane noise exposure and health consequences. Current findings, taken in sum, indicate only that further rigorous studies are needed. Therefore, the benefits analysis does not assess the effects of noise reduction on health.

Competitive Impact

Comment: The joint submission states that the draft Regulatory Impact Analysis fails to make a meaningful appraisal of the rule's effect on competition in the airline industry. In particular, the commenters claim that the analysis failed to give adequate consideration to the effect on small or financially weak carriers and the adverse effects on fares and service. The commenters also claim that reliance on the report of the Secretary's Task Force on Competition in the U.S. Domestic Airline Industry should not be the basis for determining the competitive effect of the final rule. The joint submission claims that the report is outdated (based on data from 1984–1988) and was never intended to be used as a predictor of future competition in the U.S. airline industry.

Final Rule: The Regulatory Impact Analysis provides a general and reasonable assessment of the potential effects of this rule on competition and on large and small airlines. In addition, the Secretary's report thoroughly assesses the level of competition in the U.S. airline industry. While the airline industry has changed since 1988, the level of competition in the industry has not changed significantly. The major conclusions in the Secretary's report are still valid today and, in the FAA's estimation, will continue to be valid over the next 10 years. More current data placed in the docket for this rule show that the number of competitive markets has continued to increase.

Comment: A group of commenters asserts that the FAA used outdated and irrelevant financial data and, therefore, overestimated the industry's ability to cope with the proposed rule's costs. They also assert that the analysis underestimated the degree to which individual carriers would exit airline markets, particularly given the rule's disproportionate impact on individual carriers.

Final Rule: The financial data used in the final Regulatory Impact Analysis is the most recent and credible data

available at this time. The financial data contained in the FAA's Quarterly Industry Review (December 1990) and Form 41: User's Guide—Financial and Traffic Statistics for U.S. Certificated Carriers are considered to be very creditable and relevant sources of airline financial data.

Comment: Another commenter questions the FAA's use of the DOT Competition Study (February 1990). The commenter claims that the study does not establish the degree of concentration in domestic airline markets and that the study lacks significance for public policy decision-making in competition.

Final Rule: The FAA disagrees. The draft Regulatory Impact Analysis merely referenced a conclusion of the DOT Competition Study (Pricing, Volume 1, page 2). That study concludes that the fundamentally competitive nature of the industry has not changed in recent years. The proliferation of hub-and-spoke systems and their inherent stability have reduced the intensity of price competition in many short-haul local markets, while intensifying the benefits of price competition for the vast majority of travelers.

Comment: A number of commenters assert that the proposed rule fails to consider that the national hub-and-spoke system lacks the power to discipline or control regional and local markets. This is particularly true for high frequency or shuttle-type service.

Final Rule: The FAA disagrees. The competition section contained in the analysis for the proposed rule assumed that regional and local markets would be dictated by competitive market forces, not the hub-and-spoke system. The FAA does not have, nor did it receive from the commenters, sufficient information that would lead it to think otherwise.

Comment: Several commenters state that the proposed rule would cripple their ability to expand and, in some cases, their ability to maintain low-fare air service. Other commenters state that the proposed rule is unnecessarily inflexible, and that it is contrary to the intent of Congress that compliance with the statute be achieved through a phasein of Stage 3 airplanes.

Final Rule: The FAA acknowledges that the proposed rule would restrict some air carriers' ability to expand more than others. Consequently, the FAA has incorporated more flexibility into the final rule. The final rule adds additional flexibility through the addition of carry-forward compliance credits, waivers from the interim compliance requirements, and a fleet mix percentage compliance option.

Comment: Some commenters contend that the proposed rule would cost an inordinately greater percentage of the net worth of the smaller, low-fare carriers than that of any of the larger carriers. After the FAA's calculation of present value cost is taken into consideration, three low-fare carriers have a remaining net worth of $117 million. Three larger carriers will have a remaining net worth approximating $5.4 billion. This is a 45-fold disparity.

Final Rule: The FAA recognizes that operators of Stage 2 airplanes will be affected in varying degrees by this rule. Overall, the FAA expects that actual costs will be less than those cited because the cost estimates used in the draft Regulatory Impact Analysis are conservative (high). The estimates were based on the worst-case scenario that all Stage 2 airplanes would be replaced rather than modified to meet compliance by less costly alternatives. In fact, the FAA anticipates that many air carriers, as practicable, will install noise abatement retrofit equipment.

Comment: According to a commenter that operates Boeing 737–200 airplanes, the proposed rule would have a severe effect on its ability to serve its markets. The commenter states that if the proposed rule is adopted, these markets would be the first to suffer.

Final Rule: As stated previously, the proposed rule is not expected to have a significant, if any, impact on small or nonhub markets. Those air carriers affected by the final rule and the statute are expected either to replace their Stage 2 airplanes with Stage 3 airplanes or install noise abatement retrofit equipment. Given the competitive market, if an air carrier fails to replace Stage 2 airplanes serving smaller markets, then it is reasonable to assume that such services would be provided by another air carrier. The commenters also failed to provide any evidence that would support their allegation of the severe adverse impact on its markets in question as well as those for other air carriers' markets.

Regulatory Flexibility Determination

Comment: With regard to the impact of the proposed rule on small carriers and those with few U.S. operations, some of the airlines comment that waivers from the interim compliance requirements should be considered to give small carriers some added flexibility in meeting the December 31, 1999, deadline. Such waivers, according to the comments received, would recognize the value of competition provided by small carriers and address their special financial needs.

Final Rule: The final rule contains a mechanism by which all operators may apply for waivers from interim compliance requirements. The effect of compliance on competition and an operator's financial status are among the criteria that will be used to evaluate applications for such waivers.

Comment: A small express carrier indicates that it is much more costly proportionately for a smaller air carrier to convert a fleet to Stage 3 because at any one time there may be several airplane types operated. For smaller carriers, the cost of maintaining an inventory of parts cannot be spread out over a large number of airplanes.

Final Rule: Congress required the FAA to establish a compliance framework that would eventually result in the elimination of Stage 2 airplane operations. Any dates established would require an air carrier to maintain an inventory of spare parts for more than one kind of airplane if replacement airplanes are the operator's only option. The commenter did not offer any flexible solution that could eliminate the inventory problem as described above.

Comment: Many comments were received concerning the minimum fleet size for a foreign air carrier to be subject to the interim compliance dates of the rule. Some comments suggest that the minimum fleet size be increased from two to four or five. A foreign airline suggests that the FAA exempt those carriers from the interim compliance dates whenever the carrier operates no more than one daily round trip flight to the contiguous United States.

Final Rule: In the final rule, U.S. operators and foreign air carriers are treated the same. This change from the proposed rule obviates the need for special circumstances for foreign operators of small fleets. Both U.S. operators and foreign air carriers will benefit from the rounding provision in terms of the number of airplanes that must be retired.

Comment: In terms of the rule's flexibility regarding noise abatement retrofit equipment availability, a municipality's transportation department commented that owners of DC–8 airplanes can only modify their airplanes with new engines. This commenter states that other noise abatement retrofit equipment for the DC–8 airplane is not available.

Final Rule: The FAA agrees that currently there is no certificated hushkit-type noise abatement retrofit equipment available for the DC–8 airplane. Owners of DC–8 airplanes still have the option of replacing engines, retiring airplanes, or adding to their Stage 3 fleets in order

to comply with the final rule. Operators may also apply for a waiver from an interim compliance requirement and present their circumstance of lack of available technology causing greater costs of compliance.

Federalism and International Trade Impacts

With regard to the proposed sections on Federalism and the International Trade Impact Analysis, no substantive comments were received.

Section-by-Section Discussion of the Final Rule

Section 91.801 Applicability: Relation to Part 36

In the NPRM, the FAA proposed to revise §§ 91.801 through 91.811 to accommodate the regulations implementing sections 9308 and 9309 of the statute. After further consideration, the FAA has decided that to maintain continuity in subpart I of part 91, the new regulations implementing the statute will be added beginning with § 91.851. This designation will allow faster reference to the set of regulations that apply to large airplanes operating in the contiguous United States, and leaves intact the operating noise limits governing areas of the United States not covered by the statute and the regulations regarding Stage 1 and supersonic airplanes.

The only exception to this designation is the addition of paragraph (c) to § 91.801 that describes the applicability of the subject regulations and refers the reader to the proper sections of subpart I.

In the NPRM, the FAA indicated that it proposed to limit the application of the phaseout requirements to airplanes with standard airworthiness certificates. This limitation would have effectively excluded a small number of airplanes with experimental and restricted category airworthiness certificates from the phaseout. Such airplanes are generally used for research and development, firefighting, and other specialized purposes and cannot, by definition, be used in revenue service.

After further review, the FAA concluded that such an interpretation of the statute may not fairly be made. Section 9308 of the statute is unambiguous in its coverage of "any subsonic turbojet aircraft" without limitation as to its airworthiness certification. Accordingly, these regulations must be read as applicable to all civil subsonic turbojet airplanes with a maximum certificated weight of more than 75,000 pounds, regardless of the type of airworthiness certificates they possess. The language of § 91.801(c) has been revised accordingly.

Section 91.851 Definitions

A definitions section, § 91.851, has been added. The definitions apply only to §§ 91.853 through 91.875. These terms and their specialized meaning for the regulations have been gathered in one place to facilitate reference to terms used repeatedly.

All of the terms appearing in this section have the same meaning as proposed in the NPRM. At the request of commenters, some of the terms have been clarified.

The only term that warrants further explanation is operations specifications. The term is defined in § 91.851 to mean an enumeration of an operator's airplanes by type, model, series, and serial number that were operated by an operator on a given day (most likely the date chosen for establishing its base level or for reporting its status).

The FAA is aware that some operators are not required to maintain operations specifications as they are formally known, and that the operations specifications of some operators do not actually contain a list of airplanes being operated.

However, all operators have or can create a list of airplanes that they are operating on any given day. The FAA uses the term operations specifications in §§ 91.851 through 91.875 as a shorthand reference to such a list, without regard to whether such list is formally maintained or created for the purpose of reporting to comply with §§ 91.853 through 91.875. For operators that maintain such lists to comply with other regulations, the FAA anticipates that such lists will be submitted as they are maintained.

The definition and the use of this term in these regulations does not change the status, designation, content, retention or any other requirement for operations specifications required elsewhere in the Federal Aviation Regulations.

Section 91.853 Final Compliance: Subsonic Airplanes

Section 91.853 implements the final compliance date for Stage 3 operations set by the statute, 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 statute also provides that this prohibition:

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

Accordingly, § 91.853 limits the compliance and nonaddition provisions to Stage 2 airplanes that are operated to or from any airport in the contiguous United States.

Section 91.855 Entry and Nonaddition Rule

The statutory nonaddition rule, section 9309, prohibits the operation in the contiguous United States of any Stage 2 airplane imported after November 5, 1990. Specifically, the statute states:

> [N]o person may operate a civil subsonic turbojet aircraft with a maximum certificated 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 a person who imports the aircraft into the United States under a written contract executed before [November 5, 1990].

The definition of import proposed in the NPRM and adopted here concerns the transfer of an ownership interest from a non-U.S. person to a U.S. person when the airplane is to be operated in the United States. The nonaddition rule protects U.S. ownership interests in Stage 2 airplanes when that interest existed on November 5, 1990, regardless of the airplane's location on that date. Such airplanes are allowed to return to and operate in the contiguous United States. Thus, the test of the nonaddition rule becomes one of the legal ownership of the airplane on November 5, 1990.

The nonaddition rule is written into the operating rules of part 91 in the form of a regulation describing categories of airplanes that will be allowed to operate in the contiguous United States as of September 25, 1991.

These descriptions were proposed in the NPRM as § 91.805, but because of the designation considerations described earlier, is adopted in the final rule as § 91.855. In addition, this section has been revised to facilitate reference and to clarify applicability.

Section 91.855(a) allows for the operation of any Stage 3 airplane in the contiguous United States without further restriction by this subpart. This was proposed as § 91.805(a)(1), and is adopted without change as § 91.855(a).

Section 91.855(b) allows for the operation of any Stage 2 airplane that was owned by a U.S. person on November 5, 1990, and has remained U.S.-owned since that time. The reference to airplanes in an operator's base level that was proposed in the

NPRM was found to be a source of confusion. The airplanes intended to be covered by the proposed section are all included within the provisions of § 91.855.

As noted in the disposition of comments, this revision clarifies that this provision was not meant to be used to operate a foreign-owned leased airplane once it leaves the fleet of a U.S. operator at the termination of a lease. Leasing of foreign-owned airplanes is to be considered under new § 91.855(c).

As noted in the disposition of comments, the term "U.S. operator" was seen as too restrictive a source of airplanes. Section 91.855(b) refers to a Stage 2 airplane owned by a U.S. person, without further reference to the status of the owner.

Section 91.855(c) allows the operation of foreign-owned Stage 2 airplanes leased to U.S. operators before and on September 25, 1991. This provision was not explicitly stated in the NPRM. Its absence was interpreted by some to mean that foreign-owned Stage 2 airplanes leased to U.S. operators were categorically denied from operation, and by others to be presumed as allowed under the provision for airplanes in an operator's base level.

The addition of § 91.855(c) clarifies that U.S. lessees of foreign-owned Stage 2 airplanes may operate those airplanes for the term of the lease in effect before and on September 25, 1991, including any extensions thereof that were provided for by the lease agreement in effect before and on that date.

The phased compliance status of an airplane leased after the date chosen by an operator to establish its base level is dependent on that base level and subject to the regulations regarding the operator's compliance. No foreign-owned Stage 2 airplane leased after the chosen date gains any special base level treatment simply because of its leased status.

Operators should be aware that a Stage 2 airplane that is not actually "purchased" under a lease/purchase agreement until after November 5, 1990, must have a determination made as to its status with regard to the nonaddition rule. Persons interested in such findings of purchase and ownership are advised to read the FAA Notice of Legal Opinion published at 55 FR 40502 (October 3, 1990). This is the same opinion referenced in the NPRM and concerns determinations of ownership. As indicated in the definition of owner in § 91.851, these determinations will be made under the same considerations as those for part 47 of the FAR.

Section 91.855(d) allows for operation of Stage 2 airplanes by a foreign air carrier. This was proposed as § 91.805(a)(3). The reference to the proposed phaseout section has been removed because that provision has been moved to § 91.855(h) to clarify its applicability to all Stage 2 airplanes described in § 91.855.

Section 91.855(e) allows for the operation of Stage 2 airplanes by foreign operators when they are operated for a purpose other than foreign air commerce. This was proposed as § 91.805(a)(4), and is adopted here as § 91.855(e) without change.

Section 91.855(f), proposed as § 91.805(a)(5), tracks the language of the nonaddition rule in the statute and allows for the return and operation of Stage 2 airplanes that were U.S.-owned on November 5, 1990, leased to a foreign airline, and returned within 6 months of the expiration of the lease.

Two changes have been made to this section. The first concerns the interpretation of the language of the statute made by the FAA in the preamble to the NPRM. As indicated in the disposition of comments, the explanation overstated the meaning of the statutory language. It is clear that U.S.-owned Stage 2 airplanes did not have to be leased to a foreign airline on November 5, 1990, to qualify for return; U.S.-owned Stage 2 airplanes may be leased at any time. The operational status of the airplane after a return will be determined according to the regulations. In brief, while a Stage 2 airplane that was operated as part of an operator's fleet on November 5, 1990, may subsequently be leased outside the United States, its later return to the contiguous United States will not count as an addition to a U.S. operator's base level. This concept is incorporated into § 91.861(a)(1) and prevents multiple additions to an operator's base level that would be double counted as an airplane phased out by the removal for leasing.

The second change to this section concerns the term "foreign air carrier" used in the statute. That term now appears as "foreign airline" in the regulation. As stated in the disposition of comments, there is no indication that Congress meant to limit the use of this provision. The adoption of the term foreign air carrier as used in the FAAct could have a discriminatory effect on U.S. owners of Stage 2 airplanes that were leased to a foreign operator that did not have foreign air carrier status. Since the intent of the nonaddition rule includes the protection of preexisting U.S. ownership interests, the language of the regulation has been broadened as requested.

Accordingly, § 91.855(f) is adopted with the changes noted.

Section 91.855(g), proposed in the NPRM as § 91.805(a)(6), tracks the language of the statute regarding the status of airplanes purchased by a U.S. person from a foreign owner (i.e., imported) under a written contract executed before November 5, 1990.

As indicated in the preamble to the NPRM, the FAA does not intend to extend the meaning of the term "executed contract" beyond its generally accepted legal interpretation. In general, the FAA interprets the language of the statute to attempt to account for airplanes that had legally changed ownership but were not yet physically present in the United States and were not leased on November 5, 1990. As described in the comment disposition, executory contracts are those that are considered incomplete. Any determinations of whether contracts are executed or executory beyond these simple circumstances must be made on a case-by-case basis.

Accordingly, § 91.855(g) is adopted without change except as to its designation.

Section 91.855(h) makes every otherwise operable Stage 2 airplane described in the preceding paragraphs subject to the compliance provisions of § 91.865 or § 91.867 that are applicable to the airplane's operator. Nothing in § 91.855 regarding Stage 2 airplanes may be read to negate any provision of the compliance requirements mandated by the statute and incorporated into the regulations at §§ 91.865 or 91.867. This provision is a new paragraph added at the end of § 91.855 to remove individual references and leave no question that all Stage 2 airplanes are covered by the compliance requirements.

Section 91.857 Airplanes Imported to Points Outside the Contiguous United States

This section addresses special rules applicable to airplanes imported (purchased by a U.S. owner from a foreign owner for U.S. operation) after November 5, 1990. When used to provide air transportation, these airplanes may only be operated outside the contiguous United States.

To distinguish these airplanes, the NPRM included proposed § 91.805(d) that required that a statement be added to the operations specifications of the operator that the airplane could not be used to conduct air transportation to or from an airport in the contiguous United States. That requirement is maintained in the final rule as § 91.857(a). Also included as § 91.857(b) is a provision

that allows Stage 2 airplanes imported into noncontiguous States on or after November 5, 1990, to operate in the contiguous United States for the purpose of maintenance. As discussed in the disposition of comments, the statute limits only the operation of such imported airplanes for the purpose of air transportation.

Accordingly, where operated under a special flight authorization that limits the operation to a non-revenue or "ferry" flight, the airplane is not providing air transportation and can be operated into the contiguous United States for the purpose of maintenance. A special flight authorization issued for this purpose must include the fact that it was issued pursuant to this regulation.

Section 91.859 Modification To Meet Stage 3 Noise Levels

The statute provides an exemption in the nonaddition rule for imported Stage 2 airplanes to be operated in the contiguous United States to obtain modifications in order to comply with Stage 3 noise levels.

The FAA will be issuing a Special Federal Aviation Regulation (SFAR) detailing the procedures for obtaining a special flight authorization under this section. In general, the FAA anticipates requiring that an applicant show that it has a valid contract for a certificated modification to secure the special flight authorization. This is the same standard that the FAA has applied consistently to requests to operate Stage l airplanes to obtain modifications to comply with Stage 2 noise levels.

Until the SFAR is adopted, persons wishing to take advantage of this provision for airplanes imported after November 5, 1990, may apply under 14 CFR 11.25 for an exemption from § 91.855.

Accordingly, this provision, proposed as § 91.805(c) is adopted as § 91.859, with the changes appropriate to its redesignation.

Section 91.861 Base Level

Under the provisions of this section, each U.S. operator must determine its "base level" of Stage 2 airplanes according to a specified formula. Included are those airplanes on operations specifications on any one day selected by the operator during the period from January 1, 1990, through July 1, 1991; those airplanes added pursuant to the statutory provisions for the return or purchase of Stage 2 airplanes in § 91.855 (g) and (h); and those airplanes acquired with a corresponding amount of base level under § 91.865. Returns, purchases, and transfers of airplanes with base level are discussed further under the analyses of §§ 91.855 and 91.865.

Each foreign air carrier must determine its base level by including those Stage 2 airplanes on its U.S. operations specifications on any one day during the same 18-month period, plus foreign air carrier base level acquired from other persons. Any such acquisition must be made only with a corresponding number of Stage 2 airplanes.

The rule provides the flexibility necessary to transfer a single airplane with base level or an entire fleet. Elimination of any number of Stage 2 airplanes does not alone change the base level number.

Since, by definition, new entrants did not operate Stage 2 airplanes subject to these regulations during the base level determination period, they will not have a base level. Section 91.867 provides a fleet mix compliance percentage for new entrants depending on the time of market entry.

The definition of new entrant here is different from the definition used in new part 161. In part 161, a new entrant is any aircraft operator that did not operate to or from a particular airport at the time a local noise or access restriction was adopted. In the instant rule, a new entrant is an operator that did not operate Stage 2 or Stage 3 airplanes in the contiguous United States before July 1, 1991.

Section 91.863 Transfers of Stage 2 Airplanes With Base Level

Section 91.863 contains the regulations regarding the transfer of Stage 2 airplanes. Section 91.863(a) indicates that Stage 2 airplanes may be transferred with or without the corresponding amount of base level, but that base level cannot be transferred without the corresponding amount of Stage 2 airplanes.

The FAA presumes that the portion of the base level that corresponds to a leased airplane remains with the operator when the airplane is returned to the owner, unless the lessee and lessor agree otherwise. One consideration in such an agreement would be that the transfer of base level would reduce the operator's base level and affect the number of Stage 2 airplanes it would be allowed to operate after the next compliance date.

Section 91.863(b) indicates that while Stage 2 airplanes and the corresponding base level may be transferred between U.S. and foreign persons, foreign air carriers cannot use base level from U.S. operators, and U.S. operators cannot use base level from foreign air carriers to operate Stage 2 airplanes.

Section 91.863(c) requires that whenever a transfer of airplanes with base level occurs, the transferring and acquiring parties must submit a report of the transaction to the FAA. That report must include the type of base level transferred, that is, whether it is U.S. operator base level or foreign air carrier base level.

Section 91.863(d) states that any transaction or series of transactions in which base level is transferred will be scrutinized by the FAA. Transactions that ultimately result in no increase or decrease in the number of Stage 2 airplanes of either the acquiring or transferring operator will not be valid to establish compliance with the requirements of § 91.865.

This provision is intended to prevent sham transactions involving base level transfers. This provision is necessary to prevent an unrestricted transfer of base level that would function solely as a means to escape compliance by a reduction of Stage 2 airplanes or a change in fleet mix.

As an example, Operator A with a base level of 100 sells 100 Stage 2 airplanes and the corresponding base level to Operator B before the first compliance date. Operator B already had 100 Stage 2 airplanes and a base level of 100. Operator A then buys back the airplanes without the base level, and chooses to report compliance with the fleet mix option of § 91.865(d) because it has enough Stage 3 airplanes to do so. Since the fleet mix option does not require a calculation of base level, Operator A is unaffected by the reduction to its base level.

However, Operator B now has a base level of 200 but only has 100 Stage 2 airplanes. Operator B would be in compliance with the provisions of § 91.865(b) for the 1994 compliance date since it holds twice as much base level as the number of Stage 2 airplanes it operates. In fact, Operator B could add 50 more Stage 2 airplanes to its fleet and still meet the first compliance date. Or, Operator B could do nothing, and it would meet both the first and second compliance requirements of § 91.865(b). Both operators would be in compliance with their chosen options under § 91.865, yet no airplanes would have been eliminated.

Section 91.863(d) indicates that the base level transaction in this example would not be considered valid for Operator B to establish compliance under the phaseout option of § 91.865(b). The net effect of the transactions between Operators A and B is no change in the number of Stage 2 airplanes for either operator. The

regulations do not allow the transfer of base level without a corresponding number of airplanes, which is the eventual result of these transactions. It is clear that neither operator could show a legitimate business purpose for this series of transactions—they constitute no more than an effort to transfer base level. Section 91.863(d) disallows the result of this transaction from being used to establish compliance.

In another example, Operator A finds that it cannot meet the fleet mix requirement of § 91.865(d) for a given compliance date. Before that date, Operator A transfers enough Stage 2 airplanes to Operator B, which can absorb them and still meet its compliance requirement.

If, after the compliance date passes, Operator A takes back its Stage 2 airplanes, it would be in violation of the requirement that it maintain the Stage 2 number or percentage it had on the compliance date just passed.

Alternatively, if Operator A eliminated some other Stage 2 airplanes after the compliance date in order to get back the ones it transferred to Operator B, the transactions would be suspect under § 91.863(d) since it would have been entered into only for Operator A to show compliance on the date required while in reality it was still adjusting the size of its fleet.

Similarly, transactions involving the subleasing or transferring of Stage 3 airplanes to bolster an operator's fleet past a compliance date would also fail the compliance test.

Operators that find themselves unable to comply for reasons of capacity should apply for a waiver from the interim compliance date.

Section 91.865 Phased Compliance for Operators With Base Level

To incorporate the many requests for flexibility in the elimination of Stage 2 airplanes, § 91.865 sets out two compliance options for operators of Stage 2 airplanes that have established base levels.

Section 91.865(a) indicates that the rule for reduction of Stage 2 airplanes does not apply to new entrants, since they are accounted for separately in § 91.867, nor does it apply to foreign operators not engaged in foreign air commerce.

Each operator that operated airplanes before July 1, 1991, and has an established base level, has a choice of how it wishes to comply at any interim compliance date. An operator may choose to comply with paragraph (b) and phase out its Stage 2 airplanes, or it may choose to comply with paragraph (d) and achieve a certain percentage of Stage 3 airplanes in its fleet. Both options function as a phased transition to the statute's final compliance date of December 31, 1999.

An operator can mix its compliance by choosing to comply with paragraph (b) on one compliance date and paragraph (d) on another. Between compliance dates an operator must maintain the level of compliance it demonstrated on the previous compliance date. This is discussed in more detail below.

Section 91.865(b) sets out the amount of reduction of Stage 2 airplanes from its base level required by an operator on the date of compliance. For example, an operator with a base level of 100 on December 31, 1994, may operate no more than 75 Stage 2 airplanes at any time after that date. After December 31, 1996, that operator may operate no more than 50 Stage 2 airplanes, and after December 31, 1998, no more than 25 Stage 2 airplanes.

Section 91.865(c) indicates that the calculation of how many airplanes may be operated is to be made pursuant to the operator's base level, including any adjustments that were made prior to the compliance date in question.

Section 91.865(d) sets out the alternative method of compliance that an operator may choose. Compliance with this paragraph is achieved by operating a fleet that consists of not less than 55 percent Stage 3 airplanes after December 31, 1994, not less than 65 percent Stage 3 airplanes after December 31, 1996, or not less than 75 percent Stage 3 airplanes after December 31, 1998.

An operator that switches from one method of compliance to the other at different compliance dates may not exceed the number of Stage 2 airplanes it was allowed to operate on the previous compliance date. For example, Operator A has a base level of 100 on December 31, 1994, reports compliance under § 91.865(b) and afterward operates only 75 Stage 2 airplanes. It also operates 100 Stage 3 airplanes, such that its fleet mix is 57.1 percent Stage 3 airplanes. Operator A cannot then acquire 7 additional Stage 2 airplanes to bring its total Stage 2 airplanes to 82 and its fleet mix to 55 percent Stage 3. Operator A must stay at or below the number of Stage 2 airplanes it was allowed to operate after the previous compliance date. In order to increase the number of Stage 2 airplanes it operates before the next compliance date, Operator A would have to acquire sufficient base level to do so. Each operator must maintain the compliance it reported at the previous compliance date.

An operator that reported compliance pursuant to § 91.865(d) at one compliance date may increase the number of Stage 2 airplanes it operates before the next compliance date only if it also adds enough Stage 3 airplanes to maintain the percentage required.

Section 91.865(e) indicates that compliance calculations that result in a fraction may be rounded to allow the operation of the next whole number of Stage 2 airplanes. For example, under paragraph (b), an operator with a base level of 123 would have a calculation that resulted in 92.25 airplanes after the first compliance date. That operator may operate 93 Stage 2 airplanes after that date. Under paragraph (d), an operator that found itself, for example, with a fleet that consisted of 54.22 percent Stage 3 airplanes at the first compliance date could round this number up to 55 percent without eliminating any more Stage 2 airplanes.

Section 91.867 Phased Compliance for New Entrants

Paragraphs (a)(1), (2), (3), and (4) of § 91.867 provide a Stage 2 airplane fleet allocation for U.S. new entrants that hold an operating certificate under part 121, 125, or 135 of the FAR. The rule specifies the minimum percentage of a new entrant's airplanes that must meet Stage 3 noise levels, with the specific percentage tied to the date that the new entrant begins operations. The definition of Stage 3 airplane in § 91.851 prohibits airplanes with a maximum certificated weight of 75,000 pounds or less from being counted to meet compliance schedule percentages for new entrants.

Paragraphs (b)(1), (2), (3), and (4) provide the Stage 2 airplane fleet allocation for foreign air carrier new entrants that hold an operating certificate under part 129 of the FAR.

Section 91.867(c) indicates that calculations of the number of airplanes operated by a new entrant that result in a fraction may be rounded to allow the operation of the next whole number of Stage 2 airplanes.

Section 91.869 Carry-forward Compliance

Section 91.869 indicates that an operator that exceeds a compliance requirement of § 91.865(b) may accrue compliance credit for the number of airplanes by which it exceeds the number required for compliance. Such carry-forward compliance credit may accrue at the December 31, 1994, or December 31, 1996, compliance date. It may be used at the December 31, 1996, or December 31, 1998, compliance date.

Section 91.869(b) indicates that operators that choose to comply with the phaseout option can use the excess number of Stage 2 airplanes phased out as a credit against later compliance with § 91.865(b) or (d).

For example, under § 91.865(b) an operator with a base level of 100 may operate no more than 75 Stage 2 airplanes after December 31, 1994. If at that time the operator reports only 70 Stage 2 airplanes, it may later claim a carry-forward compliance credit of five. Accordingly, on December 31, 1996, instead of reducing its Stage 2 airplanes to 50, it would only have to reduce that number to 55 and report that it is using its accrued carry-forward compliance credit.

If an operator that holds five carry-forward compliance credits after December 31, 1994, decides to comply with the fleet mix provision of § 91.865(d) on December 3, 1998, it may still use those credits to achieve compliance. If the operator had 69 Stage 3 airplanes and 25 Stage 2 airplanes, its fleet mix would be 73.4 percent Stage 3, or 74 percent after rounding. The operator could use its credit to calculate its fleet as containing 74 Stage 3 airplanes, and its fleet mix would then be 74.7 percent Stage 3, or 75 percent after rounding.

Carry-forward compliance credit may not be transferred to another operator. It does not expire, but it cannot be used to achieve compliance with the 85 percent fleet mix required to apply for a waiver from the final compliance date. That requirement is statutory and cannot be affected by this regulation.

Section 91.871 Waivers From Interim Compliance Requirements

The NPRM did not include a separate provision for waivers from the interim compliance requirements. As noted in the disposition of comments, many commenters requested that such waivers be provided for in the final rule to offer flexibility from the interim compliance requirements.

Accordingly, § 91.871 contains the procedures and information required to be submitted by U.S. and foreign operators when requesting such a waiver.

In general, an applicant may request a waiver when it would be financially onerous, physically impossible, or technologically infeasible to comply with the interim requirement, or when meeting the requirement would have an adverse effect on competition or service to small communities. As indicated in the disposition of comments, the FAA anticipates that the existence and availability of noise abatement retrofit equipment will be an important factor in the consideration of applications for interim waivers.

An applicant must show why granting a waiver would be in the public interest, and must submit evidence of its good faith efforts to achieve compliance. Additional information relevant to the circumstances of the application must also be submitted, as detailed in the rule language.

Applications must be submitted at least 120 days prior to the compliance date from which a waiver is sought. No individual waiver will be granted that extends beyond the next interim compliance date. If a waiver is sought for the next compliance date, an applicant must reapply based on the circumstances that exist at that time.

A summary of all applications will be published in the **Federal Register** with time allowed for public comment.

Section 91.873 Waivers From Final Compliance

The statute 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.

Section 91.873 codifies the requirement for a waiver from the final compliance requirement as set out in the statute. The terms of the statute limit the grant of a final compliance waiver to U.S. air carriers. To be eligible, a carrier's fleet must be 85 percent Stage 3 airplanes by July 1, 1999.

The rule lays out the application procedure and filing date, and specifies that to grant such a waiver, the Secretary must find that it would be in the public interest. In addition, criteria similar to the ones enumerated in the provision for waivers from interim compliance requirements will be used, including the effect of granting such a waiver on competition and small community air service.

Section 91.873(e) also states that the term of any final compliance waiver will be determined by the circumstances presented in the application. By statute, no waiver can be granted that would permit the operation of any Stage 2 airplane beyond December 31, 2003.

A summary of all applications will be published in the **Federal Register** with time allowed for public comment.

Section 91.875 Annual Progress Reports

Section 91.875(a) requires each operator covered by § 91.865 or § 91.867 to report annually to the FAA, Office of Environment and Energy, its progress on complying with the appropriate section. Progress reports are for calendar years.

Sections 91.875(a) (1) through (3) list the information that must be provided in every report, including identification of the operator, any base level transactions, and the individual airplanes removed from service or modified to meet Stage 3 noise levels. Specific identifying information will be required for each Stage 3 airplane. This information is necessary to permit the FAA to ensure that airplanes reported are in fact operated in the reporting operator's fleet, as required by § 91.865. Only those airplanes actually operated by the reporting operator will count toward determining compliance with that section. When an airplane is reported in the fleet of more than one operator, because of a lease or other arrangement, the FAA may investigate, if necessary, to determine whether the requirements of § 91.865 have been met.

Section 91.875(b) lists the information that must be included in the initial report of each operator that covers the period January 1, 1990, through December 31, 1991. The information required for this report is detailed in § 91.875(b)(1). In addition, each U.S. operator must submit its plan for meeting the requirements of the regulations and the statutory final compliance date. U.S. operators must also identify any Stage 2 airplanes that were returned or purchased pursuant to the nonaddition rule, § 91.855.

Section 91.875(c) indicates that subsequent annual reports must include any changes in the information required pursuant to paragraphs (a) and (b) of § 91.875, including the use of any carry-forward credits.

Section 91.875(d) indicates that information submitted that an operator considers proprietary should be identified and a request made to keep the material confidential.

Section 91.875(e) indicates that if actions taken by an operator during a reporting period cause it to be in compliance with § 91.853, that status must be reported. Future reports are not required unless the required information changes.

Section 91.875(f) indicates that certain annual progress reports must contain

information describing how the operator achieved compliance with the interim compliance requirements.

Economic Summary

This section summarizes the Regulatory Impact Analysis prepared by the FAA on the 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, 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, Congress has in effect already determined that the phased transition to an all Stage 3 fleet by the end of 1999 is in the public interest; that is, the collective public benefits of the phased transition outweigh its costs to the public. The FAA has prepared a regulatory impact analysis of the final rule. The purpose of the analysis is to estimate potential costs and benefits (either qualitatively or quantitatively) and to promote a better understanding of the impact of the 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 $1 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 impact analysis, this section also contains a summary of public comments, various alternatives for accomplishing the phased transition to Stage 3 airplanes, a regulatory flexibility determination as required by the 1980 Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and an international trade impact assessment. Detailed economic information supporting this final rule is contained in the final Regulatory Impact Analysis, which has been placed in the docket.

Summary of Public Comments

The public comments that the FAA received on the regulatory impact analysis, regulatory flexibility determination, and international trade impact assessment are discussed above. Some of the issues that the commenters address are the methods the FAA used to calculate the cost of compliance, whether the health benefits from noise reduction can be quantified, and the stringency of the compliance schedule. As stated above, a more detailed discussion of the comments on these topics and others can be found in the detailed Regulatory Impact Analysis of the final rule, which has been placed in the docket.

Summary of the Description of Alternative Actions

For this final rule, the FAA compared several additional alternatives. These alternatives fall under the broad categories of:

- Stage 2 phaseout schedule;
- Fleet mix schedule;
- Interim compliance waivers;
- Carry-forward compliance credits;
- Transferable rights.

Stage 2 Phaseout Schedule

A phaseout of Stage 2 airplanes was originally proposed in the NPRM. This phaseout approach would ensure that an absolute number of Stage 2 airplanes would be retired or modified by each compliance date, with the corresponding quantifiable noise benefits. It would also require every operator to share the cost burden at each compliance date. The issues associated with phaseout schedules are whether to: (1) Maintain the NPRM phaseout schedule; (2) exclude the 1998 compliance requirement of a 75 percent reduction from the base level; or (3) exclude the 1994 compliance requirement of a 25 percent reduction from the base level. A phaseout schedule that does not require significant progress toward a quieter fleet by the end of 1994 could result in a proliferation of locally proposed airport restrictions on Stage 2 operations. While, as noted in the part 161 rulemaking, the FAA would generally oppose such restrictions, considerable uncertainty and expensive deliberation would result. Eliminating the 1998 compliance date could reduce costs substantially while reducing the benefits proportionately, but would entail the risk of numerous local restrictions.

Stage 3 Phasein Schedule

As an alternative to phasing out Stage 2 airplanes, a large number of commenters supported an option to phase in Stage 3 airplanes. This alternative would allow operators to reduce the percentage of their fleets that are composed of Stage 2 airplanes by adding Stage 3 airplanes or converting Stage 2 airplanes to Stage 3. This is designated as compliance Scenario 4 in the Regulatory Impact Analysis. The FAA considered two such fleet mix schedules. The interim dates for each schedule are the same—1994, 1996, 1998—but the compliance percentages are different. Fleet mix scenario 4A would require operators to have 65, 75, and 85 percent Stage 3 fleets at each interim date, respectively. Fleet mix Scenario 4B, the option chosen for this final rule, would require 55, 65, and 75 percent, respectively.

The fleet mix option favors those operators starting the phased transition with larger percentages of their fleets consisting of Stage 3 airplanes. However, the fleet mix option could ease the compliance burden on some air carriers with a high percentage of Stage 2 airplanes. It will also provide noise relief benefits to a significant number of people, although at a slightly lesser rate than the proposed Stage 2 phaseout alone would. The major noise benefits accruing at the end of 1999 would be the same with either approach.

Interim Compliance Waivers

An issue not considered in the NPRM is whether to include waivers from interim compliance requirements. These waivers have been included in the final rule and will require the affected parties to demonstrate that they meet certain criteria before the waiver is granted.

Carry-forward Compliance Credits

Carry-forward compliance is a concept similar to transferable rights. Carry-forward compliance credits earned by phasing out additional Stage 2 airplanes can only be used by the operator generating them. The FAA concludes that carry-forward compliance credits will add flexibility and reduce compliance costs while maintaining the same level of benefits.

Transferable Rights

After careful consideration of the public comments, the FAA has determined from a qualitative viewpoint that the final rule will not include transferable rights. In making this determination the FAA reviewed several options including those proposed in the joint submission.

A complete explanation of transferable rights is presented in the preceding comment disposition section of this document.

Scenarios for the Final Rule

For the final rule, the FAA developed five compliance scenarios based on the schedules presented in the NPRM and public comments. All of the assumptions made in the NPRM for the Stage 2 phaseout will be used in the final rule. These assumptions include: airplane life (25 years), interest rate (10 percent), salvage value of Stage 2 airplanes ($1–2 million), alternative uses for the airplanes, availability of noise abatement retrofit equipment, types of replacement airplanes along with the price of fuel ($0.65 per gallon), and the cost of a new Stage 3 airplane ($186,229 to $198,237 per seat).

The FAA considered the following five scenarios:

Scenario 1—NPRM Schedule 5, a Stage 2 phaseout approach with three interim compliance dates: December 31, 1994; December 31, 1996; December 31, 1998.

Scenario 2—NPRM Schedule 5 without the December 31, 1998, compliance date.

Scenario 3—Scenario 1 plus an evaluation of any cost savings resulting from waivers granted from the interim compliance requirements and the use of carry-forward compliance credits.

Scenario 4—Adds a fleet mix compliance option to Scenario 3. There are two variations of this scenario, 4A and 4B which are explained below.

Scenario 5—Scenario 1 with the addition of a transferable rights approach.

Costs

The final rule implements a phased transition to Stage 3 airplanes as required by the statute. The costs attributed to removing all Stage 2 airplanes by December 31, 1999, for the carriers studied in this analysis for which reliable data are available is $4.2 billion. Assuming compliance by installing the least expensive noise abatement retrofit equipment on these affected airplanes,[1] the cost will be $830 million. The final rule allows operators to phase out Stage 2 airplanes under Scenario 3 or choose a fleet mix approach under Scenario 4B. Allowing air carriers to select a compromise approach maximizes benefits and minimizes costs. The costs of these scenarios are presented below.

[1] The airplanes that will be affected by the statutory ban and the final rule are those that will be 25 years old after 1994.

Five compliance scenarios were evaluated for the final rule and will be described in a later section entitled Cost of Compliance. These statutory costs are underestimated because the FAA is assuming that Stage 2 airplanes are instantaneously replaced with Stage 3 airplanes at midnight, December 31, 1999. In reality, operators will remove Stage 2 airplanes over a period of time. Conversely, the costs associated with the five compliance scenarios are overestimated.

These compliance scenarios can be met by the operators by either replacing airplanes or installing noise abatement retrofit equipment. Scenario 3, for instance, allows compliance to be achieved only by eliminating Stage 2 airplanes while Scenario 4 allows compliance to be achieved by either eliminating Stage 2 airplanes, adding Stage 3 airplanes, or both. In most cases, replacing Stage 2 airplanes with new Stage 3 airplanes will cost more than installing noise abatement retrofit equipment. Because the industry can comply with the statute through retrofitting with noise abatement equipment, rather than by upgrading to new airplanes, the FAA considers the retrofit cost as the more likely cost of the rule.

In addition to the cost of the final rule's phased compliance schedule, there will be administrative costs for the FAA and the industry. As required by the statute, § 91.875 requires U.S. operators to submit annual progress reports to the FAA showing compliance with the requirements of this subpart. The FAA estimates that the net present value of air carrier costs to produce annual progress reports will be $20,000. The net present value of costs to the FAA to review these annual progress reports and monitor the program will be $414,000. These compliance costs are not expected to change under any of the scenarios considered.

The following is a discussion of the major alternative scenarios considered in determining the final rule. The method of computing the costs is included.

Cost of Compliance Methodology

The true economic measure of cost resulting from the phased compliance is not the gross purchase price of a replacement Stage 3 airplane. Rather, it is the opportunity cost of capital tied up in the purchase of a new asset, plus or minus the discounted value of changes in operating and maintenance costs that may accrue by replacing older airplanes with new ones.

The opportunity cost of capital, in the case of this final rule, is the premature interest cost associated with the early unanticipated purchase of Stage 3 airplanes or noise abatement retrofit equipment. Additional costs associated with the purchase of a new airplane should be added to obtain the true purchase cost. Additional costs include employee training, tooling, spare parts, supplemental equipment, etc. To account for these additional costs, the analysis adds $1 million to published Stage 3 airplane purchase prices.

Cost of Compliance

The two cost models used in this analysis were the fleet model and the air carrier model. The fleet model was used to calculate the cost impact for all affected airplanes and assumed that the oldest Stage 2 airplane, regardless of carrier, is phased out first. The air carrier model was used to examine the cost impact on 17 major and national air carriers. It is assumed in the cost model that the oldest Stage 2 airplane by carrier is phased out first. Consequently, in the air carrier model, some newer Stage 2 airplanes owned by one carrier would be phased out before some older Stage 2 airplanes owned by another air carrier. The air carrier model was used to evaluate the costs and benefits for most of the scenarios.

Costs were estimated for the statutory ban of Stage 2 airplane and for the six alternative scenarios considered. The estimated present value of the cost of the statute, calculated by summing the present value of the costs of the individual carriers, is $4.2 billion for replacement of Stage 2 airplanes by Stage 3 airplanes and $827 million for converting Stage 2 airplanes to Stage 3 airplanes by using the least expensive noise abatement retrofit equipment. The FAA believes $827 million is the most likely cost since noise abatement retrofit equipment will likely be available for most Stage 2 airplanes early in the transition period. It is important to remember that the statutory ban costs will always be incurred without regard to the scenarios adopted in the final rule.

Four of the scenarios (1, 2, 3, and 5) that were considered in the final rule would phase out Stage 2 airplanes as was done in Schedule 5 in the NPRM; the two other scenarios (identified as Scenarios 4A and 4B) would phase in Stage 3 airplanes. Scenario 1 is the same as Schedule 5 in the NPRM, with a Stage 2 phaseout schedule as follows: 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. The present value of the cost for scenario 1

was estimated to be $1.5 billion for replacing Stage 2 airplane with Stage 3 airplanes and $300 million for converting Stage 2 airplanes to Stage 3 airplanes. The latter is considered by the FAA to be the more likely cost since noise abatement retrofit equipment is expected to be available for most Stage 2 airplanes.

Scenario 2 is similar to scenario 1, except that the 1998 compliance deadline is eliminated. This option would help reduce compliance costs for all air carriers, but operators with young Stage 2 airplanes would be aided the most. However, scenario 2 would likely encourage local airport proprietors to impose their own local airport noise and access restrictions against Stage 2 airplane operations, increasing the costs imposed on all air carriers. Scenario 2 was rejected early from consideration and no cost estimates were done for the 17 air carriers.

Scenario 3 is another phaseout alternative similar to scenario 1, but includes interim compliance waivers and carry-forward compliance credits. The waivers for interim compliance dates will provide flexibility to those air carriers that cannot otherwise comply with the compliance schedule. Carry-forward compliance credits will provide operators an opportunity to initially phase out more airplanes than required so as to reduce their requirements at the later interim compliance dates. The FAA assumed in its evaluation of scenario 3 that waivers will be granted to no more than 15 percent of the airplanes that are to be phased out on each compliance date. If an interim waiver is granted to each carrier, the estimated present value of the costs of scenario 3 is $1.2 billion for replacement and $260 million (the more likely cost) for conversion. Some air carrier might choose to use the carry-forward compliance credit option in scenario 3. If air carriers chose to use carry-forward compliance credits, the FAA estimated, for costing purposes, that they would accelerate their phaseout to 30 percent in 1994 and consequently decelerate their phaseout to 20 percent in 1998. This was not considered likely and only fleetwide estimates were done. The present value of the estimated costs were $550 million for replacement and $120 million for conversion; these cost estimates would be higher if the carrier cost model was used.

Scenarios 4A and 4B allow the phasein of Stage 3 airplanes. Under these scenarios, operators could potentially meet interim compliance dates by adding Stage 3 airplanes to their fleets, thereby reducing the fleet percentage of Stage 2 airplanes. Scenarios 4A and 4B better accommodate those air carriers whose fleets currently have a high starting percentage of Stage 3 airplanes. Scenario 4A requires 65 percent Stage 3 airplanes by the end of 1994, 75 percent Stage 3 airplanes by the end of 1996, and 85 percent Stage 3 airplanes by the end of 1998. Scenario 4B requires 55, 65, and 75 percent Stage 3 airplanes at these same dates. The estimated present value of the costs for Scenarios 4A and 4B are $1.1 billion and $273 million, respectively, to replace Stage 2 airplanes with Stage 3 airplanes and $218 million and $55 million, respectively, to convert Stage 2 airplanes to Stage 3 airplanes.

Scenario 5 would phase out Stage 2 airplanes as in scenario 1, but scenario 5 allows transferable rights. A base level would be established for each operator and would be based on the maximum number of owned or leased Stage 2 airplanes that were listed on each operator's operations specifications on any one day during the period January 1, 1990 through July 1, 1991. Under this scenario, part or all of the base level could be transferred from one domestic operator to another domestic operator, so that each operator's base level could increase or decrease accordingly. This analysis assumes that the most efficient allocation of operating rights would be based upon a first-in first-out retirement schedule. That is, the oldest airplanes would be retired first. It also assumes that if an airplane is retired earlier than its normal (25 year) useful life, an operating right would be generated that could be traded.

Under this scenario, in an efficient transferable operating rights system, the fleet would be acting as one to meet the requirements of the compliance schedule. This scenario does not require any one operator to meet its schedule. If an individual operator is unable to meet its schedule, then that operator would purchase enough operating rights to meet the compliance schedule.

The cost for scenario 5 falls between the cost of scenario 1 using fleet-wide model and the cost of scenario 1 using the carrier model. For replacing Stage 2 airplanes, the cost would be between $740 million and $1.5 billion. The cost would be between $150 million and $300 million if all Stage 2 airplanes are converted to Stage 3 airplanes.

The final rule implements scenario 4B. Each operator may choose whether to phase out its Stage 2 airplanes or phase in Stage 3 airplanes to achieve compliance on each interim compliance date.

The FAA expects that most air carriers will choose to phase in Stage 3 airplanes to achieve compliance and to convert Stage 2 airplanes to Stage 3 airplanes (to the extent that such conversions are economically logical) by using the least expensive noise abatement retrofit equipment.

Cost Estimate Assuming 30-Year Life

In addition to calculating the cost under the 25-year useful life assumption, the FAA calculated the cost of the statutory ban and final rule under a 30-year useful life assumption. This was done because some commenters suggested that the average retirement age of their airplanes is currently greater than 25 years. This was also accomplished to determine if the final rule might have been different if a 30-year useful life assumption were adopted.

The air carriers have incurred large losses resulting from reduced operating revenues due to the Persian Gulf war, coupled with a slowdown in the U.S. economy. However, this situation is expected to pass.

The FAA considers the 25-year useful life assumption to remain valid for forecasting in the long run. However, the FAA examined estimates of industry costs based on a useful life assumption greater than 25 years to assess the possible effect of this rule until the financial health of the industry improves.

Using the fleet model, the FAA estimates that the present value of the cost for converting Stage 2 airplanes to Stage 3 is $2.3 billion for scenario 1 (which was the proposed rule in the NPRM) and $2.1 billion for scenario 4B. These estimates are the sum of the costs of the statutory ban and cost of the final rule for converting the Stage 2 airplane fleet by installing noise abatement retrofit equipment. The estimated present value of the costs of replacing Stage 2 airplanes with Stage 3 airplanes is $11.2 billion for scenario 1 and $10.2 billion for scenario 4B. As previously stated, these estimates include both the costs of the statutory ban as well as the costs of the final rule (in this case, the regulatory costs are about one-fourth the total costs). If costs had been estimated for each of the 17 carriers, the total cost estimates would have been somewhat higher.

Cost Analysis of Sections of the Rule

Sections 91.801, 91.851, 91.853, 91.855, and 91.861

Section 91.801 prescribes the applicability of operating noise limits

and related requirements for civil subsonic turbojet airplanes in the United States. Section 91.851 presents definitions that are used in this final rule. Section 91.853 specifies compliance requirements. Section 91.855 provides the rules for entry and nonaddition of Stage 2 airplanes. Section 91.861 defines the base level of Stage 2 airplanes for U.S. operators and foreign air carriers. None of these sections results in any incremental compliance costs.

Section 91.857 Airplanes imported to points outside the contiguous United States

This section states that an operator with an airplane that does not comply with Stage 3 noise levels and was imported into the 48 contiguous United States on or after November 5, 1990, must include in its operations specifications a statement that the airplane will not be used to provide air commerce to or from any airport in the 48 contiguous United States. In addition, to operate that airplane in the 48 contiguous United States for the purpose of maintenance, the operator must obtain a special flight authorization. The net present value cost of obtaining special flight authorizations for airline operators is expected to be $2,300; cost to the FAA is expected to be $7,400.

Section 91.859 Modification to meet Stage 3 noise levels

This provision allows any operator to apply for a special flight authorization for modification of Stage 2 airplanes otherwise prohibited from operating to or from an airport in the contiguous United States. This provision will allow individuals to obtain modifications to meet Stage 3 noise levels in the contiguous United States on or before December 31, 1999. The costs involved with obtaining this special authorization are covered under § 91.857 above.

Section 91.863 Transfer of airplanes with base level

Section 91.863 allows, under certain conditions, for Stage 2 airplanes to be transferred between operators and others with or without the corresponding amount of base level. It states the parameters under which transfers may occur. Because the transfer of airplanes between parties is considered a normal business decision, the FAA concludes that there will be no incremental compliance costs.

Section 91.863(c) requires that when a transfer of Stage 2 airplanes with base level occurs, the transferring and acquiring parties shall, within 10 days, jointly submit written notification of the transfer to the FAA. The FAA estimates that 10 transfers will occur per year through 1999. The discounted total cost estimates of this provision to the industry will be $710 and to the FAA will be $660.

Section 91.867 Phased compliance for new entrants

Section 91.867 states the minimum Stage 3 percentage requirement for a new entrant's fleet. Due to the entry and nonaddition provisions of the statute and § 91.855, the number of Stage 2 airplanes operated in the United States is limited. Therefore, any costs associated with eliminating Stage 2 airplanes for new entrants have already been calculated in § 91.865. The costs attributable to new entrant foreign carriers are not included as a cost under this Regulatory Impact Analysis.

Section 91.869 Carry-forward compliance

Section 91.869 allows for any operator that exceeds the compliance requirements of § 91.865(b) by phasing out, modifying, or replacing more airplanes than is required at any interim compliance date to apply that number of airplanes to future compliance requirements. The cost savings associated with this provision have been identified earlier in compliance Scenario 3.

Section 91.871 Waivers from interim compliance requirements

This section will allow any U.S. operator or foreign air carrier subject to the requirements of §§ 91.865 or 91.867 to apply for a waiver from any of the interim compliance requirements. Applicants must show that a grant of waiver would be in the public interest and include certain information such as the number, type and age of Stage 2 airplanes for which a waiver is requested. The applicant must also show its current fleet, its balance sheet and cash flow position, and its good faith fleet conversion plan and equipment delivery position. The cost savings resulting from this provision are identified under scenario 3.

Section 91.873 Waivers from final compliance

This section permits U.S. operators to apply for a waiver, if by July 1, 1999, at least 85 percent of their individual fleets comply with the Stage 3 noise levels in part 36. U.S. operators must apply by January 1, 1999, and must include a plan with firm orders to ensure compliance not later than December 31, 2003. The Secretary may grant such a waiver if he finds that it is in the public interest. A waiver granted under this subsection may not permit the operation of Stage 2 airplanes in the United States after December 31, 2003. This provision is a restatement of the statute. Because it is impossible to determine at this time the extent to which waivers from the final compliance requirement will be requested or granted, the FAA has not calculated estimated costs associated with processing such waivers.

Section 91.875 Annual progress reports

This section implements the statutory requirement that, beginning in calendar year 1992, each U.S. operator and foreign air carrier subject to § 91.865 or § 91.867 shall submit to the FAA, Office of Environment and Energy, an annual report on the progress that operator has made toward complying with the requirements of this regulation. These reports must be submitted no later than 45 days after the end of the calendar year. All progress reports must provide the information as it existed at the end of the calendar year. The FAA estimates the present value costs to the FAA for all reports over 10 years to be about $414,000. In addition, the FAA estimates the present value of reporting costs over 10 years, for all carriers, to be about $20,000.

Benefits

The principal benefit of this final rule is the reduction in the number of people living in the 65 decibel (dB) day-night sound level (DNL) contours around the nation's airports. In 1990, an estimated 2.7 million individuals were within the 65 DNL dB contours. By expected attrition of Stage 2 airplanes, this number would drop to 1.3 million by December 31, 1999. The eventual elimination of Stage 2 airplanes mandated by the statute is expected to reduce this number by an additional 900,000 to a total of 400,000 with an all Stage 3 airplane fleet. The noise reduction benefits attributed to this final rule are in addition to those resulting from the 1999 statutory deadline.

The final rule ensures that the expected benefits from steady attrition of Stage 2 airplanes during the 1990's are, in fact, realized. Even though the FAA projects a natural reduction to 1.3 million people affected (without the statute) by the year 2000 without the regulations, there is no guarantee that this would occur. From 1987 to 1990, the actual retirement of Stage 2 aircraft was much less than the projected attrition (Report to Congress: Status of the United States Stage 2 Commercial Aircraft Fleet, August 1989). The statute and regulation guarantee progress. The regulations should reduce the noise

impact that has caused a patchwork of restrictions on Stage 2 operations to be promulgated by local authorities at many U.S. airports. While difficult to quantify, numerous segments of the industry have alleged serious economic harm from complying with such restrictions. Further, the final rule costs must be considered in relation to the potentially sharply higher costs of probable local phaseout rules. For comparison, the FAA estimates that if the local restrictions proposed for Los Angeles International and nearby airports were applied on a national basis, the cost to the industry would be approximately $500 million.

With the exception of the potential of noise-induced hearing loss at severe levels of noise exposure, there currently is no sound scientific basis for making adequate risk assessments of the non-auditory health effects of airplane noise in airport environs. Potential non-auditory health consequences of airplane noise exposure that have been alleged include birth defects, low birth weight, psychological problems, cancer, stroke, hypertension, and cardiac problems such as myocardial infarction and cardiac arrhythmias. The current state of technical knowledge does not support the inference of a direct relationship between airplane noise exposure and health consequences. At best, current findings, taken in sum, indicate only that further rigorous studies are needed to establish a linkage. Therefore, the benefits analysis does not assess the effects of noise reduction on health.

As a general hypothesis, noise levels are inversely correlated with residential property values. That is, as airplane noise levels decrease, it is surmised that 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 statistical studies on the change in property values as they relate to airplane noise, it is not unreasonable to assume for evaluation purposes that property values increase one-half of one percent for every decibel decrease in DNL. Using this assumption, the FAA estimates that the net present value of the quantitative benefits associated with the statute of reducing the population exposed to a DNL of 65 dB or higher would be $508 million. A statistical methodology was used to arrive at this number. Current data on an airport-by-airport basis are not available to reflect adequately the actual effect that a reduction in noise may have.

For the different compliance scenarios, the FAA evaluated the incremental noise-reduction benefits to be $42.4 million under scenario 1 and $13.6 million under scenario 2. The incremental benefits were also calculated to be $38.9 million under scenario 3, assuming interim compliance waivers, and $41.2 million assuming carry-forward compliance credits. Finally, the benefits were calculated to be between $16.1 and $28.5 million for compliance scenario 4, depending upon the percentage of Stage 3 airplanes required at each compliance date. The benefits for scenario 5 were not calculated because estimates of the volume of transferable rights that would be transferred is highly speculative. The benefits under compliance scenario 5 would be no greater than the calculated benefits under scenario 1 assuming no credits are transferred. To the extent that credits would be transferred, the benefits would be lower.

Competitive Impact Analysis of the Phasein/Phaseout Option

This section analyzes the impact of scenarios 3 and 4 on competition in the airline industry. The components that will be discussed are: (1) The financial health of the U.S. airline industry, (2) an overview of competitive impact on the industry, (3) the ability of air carriers to achieve growth, (4) the impact on competition within the airline and cargo industries, (5) the impact on service to nonhubs and small communities, and (6) the impact on new entry into the airline industry.

1. The Financial Health of the U.S. Airline Industry

The financial condition of the U.S. airlines industry has deteriorated seriously in recent months. During the first quarter of calendar year (CY) 1991, commercial air carrier operating losses totaled over $3.8 billion. Of the 12 major airlines, only Federal Express was profitable. (Major airlines are defined as those with revenues over $1 billion.) Eight of these 12 major carriers, which include American and United, had operating losses ranging from slightly more than $300 million to over $550 million. These losses resulted primarily from reduced operating revenues due to the recent war in the Persian Gulf, coupled with a slowdown in the U.S. economy. Concerns about terrorism created a reluctance on the part of a number of potential passengers to travel by air. The downturn in the demand for air travel created fierce competition among a number of major carriers that further suppressed revenues. The Persian Gulf crisis caused immediate and substantial increases in oil prices, which increased operating costs substantially. Of the 11 national airlines, only five were profitable during the first quarter. (National airlines are defined as those with annual revenues between $100 million and $1 billion.) Those five carriers posted profits ranging from $100,000 to almost $7.5 million. The six remaining carriers posted operating losses ranging from $200,000 to $51.5 million. Recent experience was similar to the last quarter of FY 1990, when 29 carriers posted operating losses totaling $2 billion. Most of this financial assessment is based on information contained in the FAA report entitled, Quarterly Industry Overview: 1st Half FY 1991, July 1991, Office of Aviation Policy and Plans.

Shortly before the NPRM was issued, two major carriers filed for protection under Chapter 11 of the bankruptcy laws (Continental on December 3, 1990, and Pan American on January 8, 1991), and another major carrier filed for bankruptcy under Chapter 7 (Eastern ceased operations on January 19, 1991). After the release of the NPRM, two additional large airlines filed for Chapter 11 bankruptcy protection (Midway on March 25, 1991, and America West on June 27, 1991). On July 30, 1991, TWA announced plans for debt restructuring which included filing under Chapter 11 in early 1992.

While these results cause concern about its near-term financial condition, the industry is expected to recover to pre-Gulf war levels of activity and profitability. Since the operating loss experienced by the airline industry is attributable to factors that either no longer exist or are abating (the Persian Gulf was and the slowdown in the economy), a return to profitability is predicted, but not necessarily at the recovery pace of other sectors of the economy.

The recent losses represent a dramatic change for the U.S. airline industry, which operated at a profit each year from 1984 through 1989. The single exception was 1986 when industry data were distorted by large losses sustained by Pan American, Eastern, and People Express.

A majority of large carriers that operate today consistently earned

profits after the initial shakeout resulting from deregulation in the early 1980's. However, none were immune to the recent flux in market conditions. The FAA projects that the air carrier industry will become profitable again as the nation's economy recovers. It is reasonable to assume that the airline industry may not recover as rapidly as the general economy since much air travel is elective. The weakened financial condition of airlines will likely reduce the ability of some carriers to modernize their fleets and compete as effectively as others. Based on this analysis, a number of provisions were included to ensure the final rule does not further exacerbate the precarious financial position of several carriers and to provide a sufficiently flexible environment to comply with this rule as the industry as a whole recovers.

These flexibility elements include: (1) The option to comply by achieving a specified total fleet mix of Stage 2 and Stage 3 airplanes, or by eliminating Stage 2 airplanes on each compliance date, (2) interim compliance waivers, and (3) credit for extra compliance achieved carried forward to a later interim compliance date. The fleet mix option provides a standard for each operator to achieve final compliance through a transition to Stage 3 airplanes by ensuring that an increasing percentage of its fleet is composed of Stage 3 airplanes. Ultimately, all Stage 2 airplanes must be retired or modified to Stage 3 to achieve final compliance. The interim waiver provision provides flexibility for an operator to receive relief from interim compliance requirements in the event that noise abatement retrofit equipment is not available or the financial condition of an operator precludes compliance. The carry forward provision provides flexibility for operators that achieve extra compliance on the first or second interim compliance dates to carry forward that extra compliance to a later interim compliance date. Thus, operators have the flexibility to do more than required for an early compliance date for credit on a later compliance date. The result of these flexibility provisions in the final rule is a reduced cost of compliance as compared to the NPRM (scenario 1).

The estimated compliance costs comparisons for the three scenarios considered for the final rule are shown in the table below. For purposes of comparison, the table also presents the cost of the NPRM (scenario 1).

SUMMARY OF ESTIMATED FINAL RULE COMPLIANCE COSTS

[1994–2000, 1990 Dollars]

Scenario	Hushkit costs	Replacement costs
1	$307 million	$1,506 million.
3	256 million	1,253 million.
4A	218 million	1,091 million.
4B	55 million	273 million.

Based on this analysis, the final rule is expected to have a significantly lower cost impact on operators of Stage 2 airplanes, as compared to requirements contained in the NPRM.

Despite the rule's significantly reduced costs compared to the NPRM, some airlines, including some financially stronger ones, still may have to divert funds from capacity expansion to compliance with the final rule. Given the weakened financial condition of the industry in general, and individual carriers in particular, as discussed above, it now seems likely that some air carriers will operate Stage 2 airplanes longer than 25 years, at least for the immediate future. Any assumption of average useful life of Stage 2 airplanes greater than 25 years drives the compliance cost estimates up dramatically. In view of this, and the current economic environment, the FAA concludes that for many carriers, the NPRM interim compliance schedule costs would have been prohibitive, with the likelihood that many air carriers would have been unable to comply, or that compliance would have significantly diminished their ability to effectively compete.

2. Overview of Competitive Impact

In the NPRM, the FAA stated that while the expected compliance cost of the proposed rule may contribute to forcing some carriers out of business, a reduction in the number of airlines offering scheduled passenger service might not significantly reduce either price or service competition within the industry. In February 1990, at the direction of the Secretary, a Department of Transportation task force released a comprehensive assessment of the state of airline competition. This assessment, 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 competitive except in short haul markets involving higher density traffic hub airports. However, these short-haul markets represent less than 5 percent of system traffic. 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 resulted in more competition as individual carriers expanded their systems from a regional to a national basis.

Moreover, the hub-and-spoke systems of service have led to the geographical expansion of most carriers and a resulting increase in city-pair competition. In other words, connecting services created by airport hubs allow more competitors in city-pair markets than would be possible with linear-type systems of service. This is particularly true for small traffic-generating points, and explains why they have been the prime beneficiaries of deregulation.

A basic issue raised by a forced conversion of Stage 2 airplanes to Stage 3 airplanes or early retirement of Stage 2 airplanes is whether this action would cause a reduction in competition. The answer depends on the number of carriers affected and the extent to which they are affected. The Department's competition study shows, however, that the national hub-and-spoke systems have enabled a relatively small number of carriers to provide more intense competitive service in most city-pair markets. On a city-pair basis, it does not take a large number of carriers to provide highly competitive service. This suggests that some loss of capacity by financially weaker carriers or the elimination of a financially weaker carrier may not have any significant lasting impact on competition at the city-pair level.

Recent information showed that the financial problems of the U.S. airline industry are far more serious than was apparent when the NPRM was drafted. Virtually all of the major carriers have sustained financial losses during CY 1990 and the three-month period ending March 31, 1991. Given this circumstance, the proposed interim compliance schedule would have significantly affected the ability of carriers to provide an acceptable level of service and would have increased the likelihood of more carriers filing for bankruptcy. Such events tend to erode competition in the industry. Based on this analysis, the final rule has been revised to be more flexible and less onerous financially than the NPRM and to ensure that competition in the U.S airlines industry remains viable.

3. The Ability of Air Carriers To Achieve Capacity Growth Consistent With the Projected Rates of Growth for the Airline Industry

Had the requirements of the NPRM been implemented, fleet expansion may have been constrained. The NPRM focused only on the elimination of Stage 2 airplanes from the fleet with no specific credit for compliance by the addition of Stage 3 airplanes. Some air carriers were not planning to replace or convert their Stage 2 airplanes as early as is required by the statute. Also, in view of the recent operating losses incurred by most air carriers, many are not financially able to increase their fleets during the transition by replacing their entire Stage 2 airplane fleets prior to their planned retirement. In view of the current financial conditions of many air carriers, implementation of the NPRM requirements could have led to a seriously reduced growth rate for the U.S. airline industry.

The final rule incorporates flexibility to accommodate industry growth when the economy rebounds. The primary provision added to accommodate growth is the provision for compliance with the interim requirements by phasing in Stage 3 airplanes. This provision encourages air carriers to achieve growth along with compliance by adding Stage 3 airplanes to their fleets.

The lower costs of the final rule (compared to the NPRM) may also increase the industry's growth potential during the transition to Stage 3 airplanes. The interim waiver and carry-forward compliance provisions add the flexibility carriers need to grow during the transition period. The more flexibility added to the compliance rules, the less cost they impose on carriers, thereby increasing the availability of capital for growth.

4. The Impact of Competition Within the Air Passenger and Air Cargo Industries

At present, Stage 2 airplanes account for a significant percentage of most air carriers' fleets as is shown in Table 4–2. The range is from 34 percent to 100 percent, with over half of the carriers falling between 50 percent and 70 percent. Because of the disproportionate fleet mix of various carriers, the NPRM, which focused on compliance solely by the phaseout of Stage 2 airplanes, would have placed disparate burdens on certain air carriers. The differences among air carriers in the average age of their Stage 2 fleets may also result in varying degrees of impact caused by aircraft retirement or replacement. Hence, a final rule which focuses solely on the elimination of Stage 2 airplanes would not be equitable in the relative burden imposed on carriers. The result would be a reduction in the ability of these carriers to compete.

In the air passenger industry, the percentage of Stage 2 airplanes in the fleets of the very large air carriers (American, United, and Delta) ranges from 34 percent to 54 percent. The average age of their Stage 2 airplanes ranges from 13 to 18 years. The smaller passenger carriers' fleets (Southwest, Midway, Alaska, etc.) range from 48 to 100 percent Stage 2, and the average age of these airplanes ranges from 10 to more than 22 years. Because of the recent bankruptcies in the air passenger industry and the estimated costs of implementing the NPRM requirements, the FAA has revised the final rule to reduce the potential cost burden on air carriers. Under the final rule, only five carriers will incur any regulatory costs. (By contrast, scenario 1 would impose costs on 15 air passenger carriers.) The four affected carriers are Delta, Eastern (no longer operating), Alaska, and Southwest; however, the cost burden to these carriers is significantly lower than what would have been incurred under scenario 1.

TABLE 4–1.—AIR CARRIERS WITH STAGE 2 AIRPLANES BY AGE

Air carriers	No. of stage 2 airplanes in fleet	Total no. of airplanes in fleet	Percent of stage 2 airplanes in fleet	Avg. age (yrs.)
Majors				
American	175	516	34	18
Continental	164	325	50	25
Delta	224	418	54	13
Eastern	119	169	70	17
Northwest	210	323	65	18
Pan Am	99	166	60	17
TWA	117	214	55	17
United	211	435	49	16
USAir	248	448	55	12
Nationals				
Alaska	36	58	62	12
America West	34	81	42	14
Hawaiian	17	24	71	18
Midway	56	66	85	22
Southwest	47	97	48	10

Source: U.S. Dept. of Transportation, Federal Aviation Administration, Office of Environment and Energy, April 1990.

TABLE 4–2.—AIR CARGO CARRIERS WITH STAGE 2 AIRCRAFT BY AGE

Air cargo carrier	No. of stage 2 airplanes in fleet	Total no. of airplanes in fleet	Percent of stage 2 airplanes in fleet	Avg. age (yrs.)
Airborne	37	41	90	21
Arrow Air	6	6	100	22
Burlington Air Express	15	15	100	23
DHL Worldwide	10	10	100	23
Emery Worldwide	52	59	88	23
Evergreen International	23	32	72	23
Federal Express	130	182	71	20
Southern Air Transport	4	4	100	21
UPS	42	104	40	21

Source: U.S. Dept. of Transportation, Federal Aviation Administration, Office of Environment and Energy, April 1990.

Competition in the air cargo industry would likely have been adversely affected by the implementation of the NPRM requirements. Among the large cargo carriers, Federal Express and UPS have 71 percent and 40 percent of their fleets, respectively, composed of Stage 2 airplanes that are subject to these regulations (as shown in Table 4–2). Some of the smaller air cargo carriers such as Burlington Air Express, DHL Worldwide, and Arrow Air have fleets that consist mostly of Stage 2 airplanes (also shown in Table 4–2). The relative cost of compliance with the NPRM requirements would have been higher for these smaller air cargo carriers (as a percent of net worth) than for Federal Express or UPS since the smaller air cargo carriers would have had to replace or install noise abatement retrofit equipment sooner on a greater percentage of their fleets. Under scenario 1, some of these smaller carriers, lacking sufficient capital for conversion to Stage 3, may have had to reduce the size of their fleets or even leave the industry, possibly resulting in the two large air cargo carriers increasing their market share.

The FAA concluded that implementing the proposed phaseout compliance schedule would have had a disproportionate impact on the air cargo industry, possibly reducing competition

to an unacceptable level. The final rule was revised to provide flexibility to cargo carriers to comply without threatening the current level of competition.

5. The Impact on Nonhub and Small Community Air Service

The hub-and-spoke system of service enables carriers to compete for very small volumes of traffic. This is the principal reason that smaller communities have been the prime beneficiaries of deregulation. These communities will continue to receive competitive service even if additional concentration occurs at the national level.

The final rule is expected to have little or no effect on nonhub and small communities through the provisions that reduce the financial impact of the rule on domestic air carriers, as compared to the NPRM. The rule adds flexibility in achieving compliance. Noise abatement retrofit equipment will soon be available for virtually all of the Stage 2 airplanes now in use. Thus, operators will not be forced to replace the Stage 2 airplanes in their fleets with Stage 3 airplanes to achieve compliance. They may instead choose the less costly option of modifying their Stage 2 airplanes to comply with Stage 3 noise levels.

The final rule will have little impact on nonhub and small communities even if noise abatement retrofit equipment does not become available as expected. A large proportion of the service provided to such communities is provided with commuter airplanes, most of which are not subject to the final rule, since their maximum certificated weight is less than 75,000 pounds. Of the 374 nonhub communities, only 64 are now served with as many as 2 round trips a day, 6 days per week, by Stage 2 airplanes that are subject to the final rule. (The original nonhub estimate of 66 in the NPRM has been corrected to 64 because 2 communities were double counted.) During 1989, these 64 communities had approximately 600,000 departures, with only 1 out of every 5 departures provided by a Stage 2 airplane subject to the final rule.

Many of these communities also receive service to several alternative hubs by different carriers. Because most traffic from small communities moves beyond the various connecting hubs, a decrease in service at any given hub will generally not affect many local passengers traveling to cities served by that hub. For example, most city-pair markets involving Akron, Ohio, have very small traffic volumes. Nevertheless, Akron, which is a nonhub, receives service to 7 different connecting airport hubs by 6 different U.S. carriers. If a carrier discontinued service to Akron, the remaining carriers would likely continue to compete for most connecting passengers. Moreover, should an air carrier choose to stop providing service to a nonhub city like Akron, another air carrier is likely to reinstate service with complying airplanes.

6. The Impact on New Entry Into the Airline Industry

Many factors affect new entry into the airline industry. These factors include the ability to raise the necessary capital, the cost of airplanes, passenger gates, gaining priority listing on reservation systems, and operating and maintenance costs (e.g., labor and fuel). Comparatively, the added costs of the final rule are a small percentage of the total cost of entry. Thus, the cost of compliance of the final rule is not expected to discourage new entrants into the industry.

The final rule provides new entrants with somewhat more flexibility than established air carriers. The percentage of Stage 3 airplanes required for compliance is lower for new entrants than the percentage required for established air carriers for the 1994 and 1996 compliance dates (25 percent of a new entrant's airplanes have to be Stage 3 by 1994 and 50 percent by 1996). A new entrant may initiate service with any number of Stage 2 airplanes and build its fleet by acquiring used airplanes and installing noise abatement retrofit equipment, as necessary to achieve compliance on each interim date. At the time of this analysis, there were about 170 Stage 3 and 600 Stage 2 airplanes available for sale or lease. The market price ranges from $3 million to $9 million for used narrow-body Stage 2 airplanes and from $14 million to $69 million for wide-body Stage 2 airplanes. Market prices for Stage 3 airplanes range from $12 million to $47 million for narrow-body airplanes and from $50 to $130 million for wide-body airplanes. Once established and operating, a new entrant may apply for interim waivers, subject to the same criteria applicable to established operators.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA; 5 U.S.C. 601 *et seq.*) 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." Small entities are independently owned and operated small businesses and small not-for-profit organizations. According to the FAA's Order on Regulatory Flexibility Criteria and Guidance, a small operator of airplanes for hire is one that owns, but does not necessarily operate, nine or fewer airplanes. The Order also defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. The small entities that will be affected by this rule are the operators of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in the contiguous United States.

The FAA has considered the impact on small entities and has written several provisions that address their concerns. Sections 91.865 and 91.867 allow for rounding of calculations resulting in fractions to permit the continued operation of the next whole number of Stage 2 airplanes. Therefore, a small operator with only one Stage 2 airplane may operate that airplane through 1999.

Also, §§ 91.871 and 91.873, waivers from interim compliance requirements and final compliance, afford more flexibility to small operators than to large operators. A small operator with few airplanes may not be financially able to convert its fleet within the prescribed time frame and remain economically viable. These provisions allow the FAA to consider the disproportionate financial impact that phased compliance could have on small entities so that they may remain economically viable.

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 were either manufactured as Stage 3 or converted to Stage 3. About 2,300 Stage 2 airplanes are affected by the statute and final rule. Many affected airplanes are not owned by the carriers under whose names they operate. These leased airplanes are owned by other air carriers, banks, insurance companies, and leasing companies. Operators of only one Stage 2 airplane are exempt from compliance with the phased elimination because of the rounding provision.

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 of these carriers own one Stage 2 airplane each. Through rounding of calculations, they are allowed to operate those airplanes through December 31, 1999. The eight other air carriers with fewer than nine Stage 2 airplanes are subject to the proposed transition regulations.

Most affected private operators own only one airplane. They are unaffected by the phased compliance schedule because of the rounding rule. Of the six operators that own more than one airplane, one owns two DC-8's that have been modified to comply with Stage 2 noise standards. The other five are very large companies.

For the reasons stated above, the FAA concludes that the final rule does not affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

International Trade Impact

The final rule is expected to have little or no impact on trade opportunities of U.S. firms conducting business overseas or for foreign firms conducting business in the United States. The rule will impose the same requirements on both domestic air carriers operating under part 121, 125, or 135 of the FAR and foreign air carriers subject to part 129 of the FAR. The cost of compliance to foreign air carriers flying into the United States under part 129 will probably be similar to the cost incurred by domestic operators. In addition, other countries are also eliminating Stage 2 airplanes. Therefore, the regulations will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Environmental Analysis

This rule implements section 9308 of the Airport Noise and Capacity Act of 1990, which directs the Secretary of Transportation to promulgate final rules for the phaseout of Stage 2 airplane operations. 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. 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)). Since this regulation is a federal action subject to NEPA, the FAA has determined its potential impacts by preparing an environmental assessment (EA).

The 1990 statute only affords the Secretary discretion to set the interim dates for the transition to an all Stage 3 fleet; the fleet composition to require on these dates; and the method of implementation. Other provisions of this statute were not included in the EA since the Secretary has no discretionary authority to take any alternative action.

This rule is intended to establish a national standard ensuring a steady decline in aviation noise over the next decade, while providing sufficient flexibility for continued growth of the national aviation system. The regulation will provide substantial noise relief to persons throughout the United States living near airports or under flight paths. Negligible increases in fuel consumption and air and water pollution from airplane emissions may result from compliance with the rule. Beneficial impacts would occur to those communities near airports or under flight paths. As a result of the review of studies in the regulatory evaluation, the impact of aircraft noise intrusion on the human and natural environment would be reduced.

After examination of the EA, the FAA has determined that no thresholds indicating the potential for significant impact were exceeded and an environmental impact statement is not required.

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared and placed in the public docket. This final rule has no significant impact when compared to the impacts on environmental quality that result from a transition to Stage 3 airplanes on the basis of normal attrition of Stage 2 airplanes.

Paperwork Reduction Act

Reporting requirements proposed in the NPRM and incorporated in § 91.875 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1990 (44 U.S.C. 3501 *et seq.*). Additional part 91 reporting requirements and modifications to the approved requirements have been submitted to OMB for review and will become effective when approved by OMB.

Federalism Implications

The regulations 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 proposal do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The transition to an all Stage 3 fleet is an integral part of the national aviation noise policy envisioned by Congress in enacting the Airport Noise and Capacity Act of 1990. That statute required the Secretary to develop a schedule of phased-in compliance beginning November 5, 1990. In addition, there is significant public interest in this transition rule and an urgent need by Stage 2 airplane operators to begin planning their compliance. Accordingly, the FAA has determined that good cause exists for making these regulations effective in fewer than 30 days.

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 rule is 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 will not have a significant economic impact on a substantial number of small entities in the air carrier industry. This rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The final Regulatory Impact Analysis of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the FAA's Office of Rulemaking at (202) 267-9677.

List of Subjects in 14 CFR Part 91

Aircraft, Airports, Aviation safety, Noise control, Reporting and recordkeeping requirements.

The Amendment

Accordingly, the FAA amends 14 CFR part 91 of the Federal Aviation 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; 49 U.S.C. 106(g).

2. Section 91.801 is amended by adding a new paragraph (c) to read as follows:

§ 91.801 Applicability: Relation to part 36.

* * * * *

(c) Sections 91.851 through 91.875 of this subpart prescribe operating noise limits and related requirements that apply to any civil subsonic turbojet airplane with a maximum certificated weight of more than 75,000 pounds operating to or from an airport in the 48 contiguous United States and the District of Columbia under this part, part 121, 125, 129, or 135 of this chapter on and after September 25, 1991.

3. New §§ 91.851, 91.853, 91.855, 91.857, 91.859, 91.861, 91.863, 91.865, 91.867, 91.869, 91.871, 91.873 and 91.875 are added to read as follows:

§ 91.851 Definitions.

For the purposes of § 91.851 through 91.875 of this subpart:

Contiguous United States means the area encompassed by the 48 contiguous United States and the District of Columbia.

Fleet means those civil subsonic turbojet airplanes with a maximum certificated weight of more than 75,000 pounds that are listed on an operator's operations specifications as eligible for operation in the contiguous United States.

Import means a change in ownership of an airplane from a non-U.S. person to a U.S. person when the airplane is brought into the United States for operation.

Operations specifications means an enumeration of airplanes by type, model, series, and serial number operated by the operator or foreign air carrier on a given day, regardless of how or whether such airplanes are formally listed or designated by the operator.

Owner means any person that has indicia of ownership sufficient to register the airplane in the United States pursuant to part 47 of this chapter.

New entrant means an air carrier or foreign air carrier that, on or before November 5, 1990, did not conduct operations under part 121, 125, 129, or 135 of this chapter using an airplane covered by this subpart to or from any airport in the contiguous United States, but that initiates such operation after that date.

Stage 2 noise levels mean the requirements for Stage 2 noise levels as defined in part 36 of this chapter in effect on November 5, 1990.

Stage 3 noise levels mean the requirements for Stage 3 noise levels as defined in part 36 of this chapter in effect on November 5, 1990.

Stage 2 airplane means a civil subsonic turbojet airplane with a maximum certificated weight of 75,000 pounds or more that complies with Stage 2 noise levels as defined in part 36 of this chapter.

Stage 3 airplane means a civil subsonic turbojet airplane with a maximum certificated weight of 75,000 pounds or more that complies with Stage 3 noise levels as defined in part 36 of this chapter.

§ 91.853 Final compliance: Civil subsonic airplanes.

Except as provided in § 91.873, after December 31, 1999, no person shall operate to or from any airport in the contiguous United States any airplane subject to § 91.801(c) of this subpart, unless that airplane has been shown to comply with Stage 3 noise levels.

§ 91.855 Entry and nonaddition rule.

No person may operate any airplane subject to § 91.801(c) of this subpart to or from an airport in the contiguous United States unless one or more of the following apply:

(a) The airplane complies with Stage 3 noise levels.

(b) The airplane complies with Stage 2 noise levels and was owned by a U.S. person on and since November 5, 1990. Stage 2 airplanes that meet these criteria and are leased to foreign airlines are also subject to the return provisions of paragraph (e) of this section.

(c) The airplane complies with Stage 2 noise levels, is owned by a non-U.S. person, and is the subject of a binding lease to a U.S. person effective before and on September 25, 1991. Any such airplane may be operated for the term of the lease in effect on that date, and any extensions thereof provided for in that lease.

(d) The airplane complies with Stage 2 noise levels and is operated by a foreign air carrier.

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

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

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

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

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

(iii) An entity owned or controlled by a corporation, trust partnership, or individual described in paragraph (g)(1)(i) or (ii) of this section; and

(2) 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 (f)(1) of this section and a foreign airline.

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

(h) Any Stage 2 airplane described in this section is eligible for operation in the contiguous United States only as provided under § 91.865 or 91.867.

§ 91.857 Airplanes imported to points outside the contiguous United States.

An operator of a Stage 2 airplane that was imported into a noncontiguous State, territory, or possession of the United States on or after November 5, 1990, shall:

(a) Include in its operations specifications a statement that such airplane may not be used to provide air transportation to or from any airport in the contiguous United States.

(b) Obtain a special flight authorization to operate that airplane into the contiguous United States for the purpose of maintenance. The special flight authorization must include a statement indicating that this regulation is the basis for the authorization.

§ 91.859 Modification to meet Stage 3 noise levels.

For an airplane subject to § 91.801(c) of this subpart and otherwise prohibited from operation to or from an airport in the contiguous United States by § 91.855, any person may apply for a special flight authorization for that airplane to operate in the contiguous United States for the purpose of obtaining modifications to meet Stage 3 noise levels.

§ 91.861 Base level.

(a) U.S. Operators. The base level of a U.S. operator is equal to the number of owned or leased Stage 2 airplanes subject to § 91.801(c) of this subpart that were listed on that operator's operations specifications for operations to or from airports in the contiguous United States on any one day selected by the operator during the period January 1, 1990, through July 1, 1991, plus or minus adjustments made pursuant to paragraphs (a) (1) and (2).

(1) The base level of a U.S. operator shall be increased by a number equal to the total of the following—

(i) The number of Stage 2 airplanes returned to service in the United States pursuant to § 91.855(f);

(ii) The number of Stage 2 airplanes purchased pursuant to § 91.855(g); and

(iii) Any U.S. operator base level acquired with a Stage 2 airplane transferred from another person under § 91.863.

(2) The base level of a U.S. operator shall be decreased by the amount of U.S. operator base level transferred with the corresponding number of Stage 2 airplanes to another person under § 91.863.

(b) Foreign air carriers. The base level of a foreign air carrier is equal to the number of owned or leased Stage 2 airplanes on U.S. operations specifications on any one day during the period January 1, 1990, through July 1, 1991, plus or minus any adjustments to the base levels made pursuant to paragraphs (b) (1) and (2).

(1) The base level of a foreign air carrier shall be increased by the amount of foreign air carrier base level acquired with a Stage 2 airplane from another person under § 91.863.

(2) The base level of a foreign air carrier shall be decreased by the amount of foreign air carrier base level transferred with a Stage 2 airplane to another person under § 91.863.

(c) New entrants do not have a base level.

§ 91.863 Transfers of Stage 2 airplanes with base level.

(a) Stage 2 airplanes may be transferred with or without the corresponding amount of base level. Base level may not be transferred without the corresponding number of Stage 2 airplanes.

(b) No portion of a U.S. operator's base level established under § 91.861(a) may be used for operations by a foreign air carrier. No portion of a foreign air carrier's base level established under § 91.861(b) may be used for operations by a U.S. operator.

(c) Whenever a transfer of Stage 2 airplanes with base level occurs, the transferring and acquiring parties shall, within 10 days, jointly submit written notification of the transfer to the FAA, Office of Environment and Energy. Such notification shall state:

(1) The names of the transferring and acquiring parties;

(2) The name, address, and telephone number of the individual responsible for submitting the notification on behalf of the transferring and acquiring parties;

(3) The total number of Stage 2 airplanes transferred, listed by airplane type, model, series, and serial number;

(4) The corresponding amount of base level transferred and whether it is U.S. operator or foreign air carrier base level; and

(5) The effective date of the transaction.

(d) If, taken as a whole, a transaction or series of transactions made pursuant to this section does not produce an increase or decrease in the number of Stage 2 airplanes for either the acquiring or transferring operator, such transaction or series of transactions may not be used to establish compliance with the requirements of § 91.865.

§ 91.865 Phased compliance for operators with base level.

Except as provided in paragraph (a) of this section, each operator that operates an airplane under part 91, 121, 125, 129, or 135 of this chapter, regardless of the national registry of the airplane, shall comply with paragraph (b) or (d) of this section at each interim compliance date with regard to its subsonic airplane fleet covered by § 91.801(c) of this subpart.

(a) This section does not apply to new entrants covered by § 91.867 or to foreign operators not engaged in foreign air commerce.

(b) Each operator that chooses to comply with this paragraph pursuant to any interim compliance requirement shall reduce the number of Stage 2 airplanes it operates that are eligible for operation in the contiguous United States to a maximum of:

(1) After December 31, 1994, 75 percent of the base level held by the operator;

(2) After December 31, 1996, 50 percent of the base level held by the operator;

(3) After December 31, 1998, 25 percent of the base level held by the operator.

(c) Except as provided under § 91.871, the number of Stage 2 airplanes that must be reduced at each compliance date contained in paragraph (b) of this section shall be determined by reference to the amount of base level held by the operator on that compliance date, as calculated under § 91.861.

(d) Each operator that chooses to comply with this paragraph pursuant to any interim compliance requirement shall operate a fleet that consists of:

(1) After December 31, 1994, not less than 55 percent Stage 3 airplanes;

(2) After December 31, 1996, not less than 65 percent Stage 3 airplanes;

(3) After December 31, 1998, not less than 75 percent Stage 3 airplanes.

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

§ 91.867 Phased compliance for new entrants.

(a) New entrant U.S. air carriers.

(1) A new entrant initiating operations under part 121, 125, or 135 of this chapter on or before December 31, 1994, 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 fleet of a new entrant must comply with Stage 3 noise levels.

(3) After December 31, 1996, at least 50 percent of the fleet of a new entrant must comply with Stage 3 noise levels.

(4) After December 31, 1998, at least 75 percent of the fleet of a new entrant must comply with Stage 3 noise levels.

(b) New entrant foreign air carriers.

(1) A new entrant foreign air carrier initiating part 129 operations on or before December 31, 1994, 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 fleet on U.S. operations specifications of a new entrant foreign air carrier must comply with Stage 3 noise levels.

(3) After December 31, 1996, at least 50 percent of the fleet on U.S. operations specifications of a new entrant foreign air carrier must comply with Stage 3 noise levels.

(4) After December 31, 1998, at least 75 percent of the fleet on U.S. operations specifications of a new entrant foreign air carrier must comply with Stage 3 noise levels.

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

§ 91.869 Carry-forward compliance.

(a) Any operator that exceeds the requirements of paragraph (b) of § 91.865 of this part on or before December 31, 1994, or on or before December 3, 1996, may claim a credit that may be applied at a subsequent interim compliance date.

(b) Any operator that eliminates or modifies more Stage 2 airplanes pursuant to § 91.865(b) than required as of December 31, 1994, or December 31, 1996, may count the number of additional Stage 2 airplanes reduced as a credit toward—

(1) The number of Stage 2 airplanes it would otherwise be required to reduce following a subsequent interim compliance date specified in § 91.865(b); or

(2) The number of Stage 3 airplanes it would otherwise be required to operate in its fleet following a subsequent interim compliance date to meet the percentage requirements specified in § 91.865(d).

§ 91.871 Waivers from interim compliance requirements.

(a) Any U.S. operator or foreign air carrier subject to the requirements of §§ 91.865 or 91.867 of this subpart may request a waiver from any individual compliance requirement.

(b) Applications must be filed with the Secretary of Transportation at least 120 days prior to the compliance date from which the waiver is requested.

(c) Applicants must show that a grant of waiver would be in the public interest, and must include in its application its plans and activities for modifying its fleet, including evidence of good faith efforts to comply with the requirements of § 91.865 or § 91.867. The application should contain all information the applicant considers relevant, including, as appropriate, the following:

(1) The applicant's balance sheet and cash flow positions;

(2) The composition of the applicant's current fleet; and

(3) The applicant's delivery position with respect to new airplanes or noise-abatement equipment.

(d) Waivers will be granted only upon a showing by the applicant that compliance with the requirements of §§ 91.865 or 91.867 at a particular interim compliance date is financially onerous, physically impossible, or technologically infeasible, or that it would have an adverse effect on competition or on service to small communities.

(e) The conditions of any waiver granted under this section shall be determined by the circumstances presented in the application, but in no case may the term extend beyond the next interim compliance date.

(f) A summary of any request for a waiver under this section will be published in the **Federal Register**, and public comment will be invited. Unless the Secretary finds that circumstances require otherwise, the public comment period will be at least 14 days.

§ 91.873 Waivers from final compliance.

(a) A U.S. air carrier may apply for a waiver from the prohibition contained in § 91.853 for its remaining Stage 2 airplanes, provided that, by July 1, 1999, at least 85 percent of the airplanes used by the carrier to provide service to or from an airport in the contiguous United States will comply with the Stage 3 noise levels.

(b) An application for the waiver described in paragraph (a) of this section must be filed with the Secretary of Transportation no later than January 1, 1999. Such application must include a plan with firm orders for replacing or modifying all airplanes to comply with Stage 3 noise levels at the earliest practicable time.

(c) To be eligible to apply for the waiver under this section, a new entrant U.S. air carrier must initiate service no later than January 1, 1999, and must comply fully with all provisions of that section.

(d) The Secretary may grant a waiver under this section if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall include consideration of the effect of granting such waiver on competition in the air carrier industry and the effect on small community air service, and any other information submitted by the applicant that the Secretary considers relevant.

(e) The term of any waiver granted under this section shall be determined by the circumstances presented in the application, but in no case will the waiver permit the operation of any Stage 2 airplane covered by this subchapter in the contiguous United States after December 31, 2003.

(f) A summary of any request for a waiver under this section will be published in the **Federal Register**, and public comment will be invited. Unless the secretary finds that circumstances require otherwise, the public comment period will be at least 14 days.

§ 91.875 Annual progress reports.

(a) Each operator subject to § 91.865 or § 91.867 of this chapter shall submit an annual report to the FAA, Office of Environment and Energy, on the progress it has made toward complying with the requirements of that section. Such reports shall be submitted no later than 45 days after the end of a calendar year. All progress reports must provide the information through the end of the calendar year, be certified by the carrier as true and complete (under penalty of 18 U.S.C. 1001), and include the following information:

(1) The name and address of the operator;

(2) The name, title, and telephone number of the person designated by the operator to be responsible for ensuring the accuracy of the information in the report;

(3) The operator's progress during the reporting period toward compliance with the requirements of § 91.863, § 91.865 or § 91.867. For airplanes on U.S. operations specifications, each operator shall identify the airplanes by type, model, series, and serial number.

(i) Each Stage 2 airplane added or removed from operation or U.S. operations specifications (grouped separately by those airplanes acquired with and without base level);

(ii) Each Stage 2 airplane modified to Stage 3 noise levels (identifying the manufacturer and model of noise abatement retrofit equipment;

(iii) Each Stage 3 airplane on U.S. operations specifications as of the last day of the reporting period; and

(iv) For each Stage 2 airplane transferred or acquired, the name and address of the recipient or transferor; and, if base level was transferred, the person to or from whom base level was transferred or acquired pursuant to Section 91.863 along with the effective date of each base level transaction, and the type of base level transferred or acquired.

(b) Each operator subject to § 91.865 or § 91.867 of this chapter shall submit an initial progress report covering the period from January 1, 1990, through December 31, 199l, and provide:

(1) For each operator subject to § 91.865:

(i) The date used to establish its base level pursuant to § 91.861(a); and

(ii) a list of those Stage 2 airplanes (by type, model, series and serial number) in its base level, including adjustments made pursuant to § 91.861 after the date its base level was established.

(2) For each U.S. operator:

(i) A plan to meet the compliance schedules in § 91.865 or § 91.867 and the final compliance date of § 91.853, including the schedule for delivery of replacement Stage 3 airplanes or the installation of noise abatement retrofit equipment; and

(ii) A separate list (by type, model, series, and serial number) of those airplanes included in the operator's base level, pursuant to § 91.861(a)(1) (i) and (ii), under the categories "returned" or "purchased," along with the date each was added to its operations specifications.

(c) Each operator subject to § 91.865 or § 91.867 of this chapter shall submit subsequent annual progress reports covering the calendar year preceding the report and including any changes in the information provided in paragraphs (a) and (b) of this section; including the use of any carry-forward credits pursuant to § 91.869.

(d) An operator may request, in any report, that specific planning data be considered proprietary.

(e) If an operator's actions during any reporting period cause it to achieve compliance with § 91.853, the report should include a statement to that effect. Further progress reports are not required unless there is any change in the

information reported pursuant to paragraph (a) of this section.

(f) For each U.S. operator subject to § 91.865, progress reports submitted for calendar years 1994, 1996, and 1998, shall also state how the operator achieved compliance with the requirements of that section, i.e.—

(1) By reducing the number of Stage 2 airplanes in its fleet to no more than the maximum permitted percentage of its base level under § 91.865(b), or

(2) By operating a fleet that consists of at least the minimum required percentage of Stage 3 airplanes under § 91.865(d).

Issued in Washington, DC on September 19, 1991.

James B. Busey,

Administrator.

[FR Doc. 91-22950 Filed 9-24-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 161

[Docket No. 26432]

RIN 2120-AD98

Notice and Approval of Airport Noise and Access Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a program for reviewing airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft. This rule is in response to specific provisions in the Airport Noise and Capacity Act of 1990 and is a major element of the national aviation noise policy required by that statute.

EFFECTIVE DATE: September 25, 1991.

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.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1991, the FAA issued Notice of Proposed Rulemaking (NPRM) 91-8 (56 FR 8644, February 28, 1991). Notice No. 91-8 was developed in response to Public Law 101-508, entitled Airport Noise and Capacity Act of 1990 ("the Act"), which was enacted November 5, 1990. Section 9304 of the Act directs the Secretary of Transportation to develop a national program to review proposed airport noise and access restrictions on the operations of Stage 2 and Stage 3 aircraft.

In addition to soliciting written comments, the FAA held three public meetings pertaining to FAA rulemaking to implement provisions of the Act. The meetings were held on March 5 and 6 in Washington, DC (Alexandria, VA); March 11 and 12 in Chicago, IL; and March 14 and 15 in Seattle, WA.

Discussion of Comments

General

More than 400 individuals and organizations submitted comments on the proposal. Many organizations submitted multiple comments. Comments were submitted by airport operators, airport associations, air carriers, air carrier associations, aircraft operators, aircraft operator and pilot associations, environmental groups and community civic organizations, businesses and business organizations, and aircraft manufacturers.

Identification of commenters varies in each discussion according to the diversity of opinions within a group of commenters. That is, where groups or classes of commenters reflect very similar views, such as airport operators or noise groups, further identification other than class is not provided. However, where greater divergence of opinion occurs within a class of commenters, greater specificity in identification of commenters is given.

A discussion of the issues addressed by the commenters follows.

Major Issues

A review of comments on the proposed rule revealed seven general issues that influence the approach to the requirements for notice, analysis, and review of noise and access restrictions embodied in the rule. Because of the pervasive impact of these topics, a separate discussion of comments is provided below on each of the general issues. After these general issues are reviewed, a discussion of comments is provided by rule subpart that also references, as appropriate, issues contained in the discussion of general issues.

Total Versus Partial Approval/ Disapproval of Proposed Restrictions on Stage 3 Aircraft, and Approval/ Disapproval of Proposed Stage 3 Alternative Restrictions

Notice No. 91-8 proposed FAA approval of restrictions in whole only, but the preamble requested comments on approval of alternative proposals submitted (with order of preference indicated) with the applicant's primary proposal.

Comments: This issue generated relatively little comment, but comments generally support issuing partial approval of proposed restrictions and permitting the airport operator to submit alternative restrictions. Supporters of partial approvals include a major airport operator, the operator of a smaller commercial service airport, and a group of communities affected by noise at a large hub airport. Another airport operator specifically endorsed a final rule that would permit the airport operator to specify alternatives.

Response: After FAA consideration of these comments, the rule is revised to permit airport operator submission of an application with alternative restrictions for approval. The rule also provides for FAA approval of restrictions in whole or in part. In the case of a partial approval, as with other approvals, the airport operator would decide whether to implement the restriction as approved by the FAA. The airport operator would have the discretion to correct those aspects of its restriction that the FAA disapproved under the rule and to submit a new application. The process for partial approval and for airport operator requests for approval of alternative restrictions is discussed in connection with subpart D below.

These changes to the final rule are intended to provide additional flexibility to the airport operator and to the FAA. The FAA considers this flexibility to be consistent with the purpose of the Act—to assure that a proper balance has been struck between local needs and the needs of commerce and the national air transportation system.

Under the final rule, the Administrator will be able to approve part or most of an access restriction plan and permit some relief to airport neighbors even though other elements of the plan may be inconsistent with the Act or otherwise impermissible. Under the proposed rule, the Administrator would have been obligated to reject a proposed local restriction on Stage 3 aircraft in its entirety even if only a minor feature was unacceptable. Such a disapproval, in some cases, would have needlessly deprived airport neighbors of some of the benefits of the proposed restriction that may be obtained by partial implementation of the proposal.

The ability of the FAA to approve portions of a proposal will also relieve the airport of the need to start the 180-day review period again, with a new proposal incorporating the approvable elements of a previously disapproved proposal. Similarly, allowing submission

of alternative restriction proposals may eliminate the need to renew the proposal application process following disapproval. In this regard, airport operators are encourged to take the initiative by proposing alternative measures, including partial implementation of any proposal, with order of preference indicated for consideration in their application. An applicant proposing partial approval should also indicate any priorities as to portions of the proposal. Alternative measures and, to the extent possible, partial implementation, should be separately addressed in the notice and analysis provided under § 161.303(c). Proposed restrictions and alternatives will be considered individually, in order of preference, on their merits. The fact that an airport operator has proposed alternatives will not affect the review and evaluation of the airport operator's preferred alternative.

Local Stage 2 Restrictions: Accelerated Phaseout of Stage 2 Aircraft

Given the companion part 91 rulemaking implementing a national program to phase out the operation of Stage 2 aircraft, the NPRM preamble stated that only in exceptional circumstances would airports be expected to phase out operations by Stage 2 aircraft in advance of the national program. For those airports that proposed phaseouts, the agency required, at a minimum, a public notice and analysis that highlighted the net benefits of the phaseout. The preamble also stressed the importance for airport operators to demonstrate that the local restriction was not discriminatory and would not constitute an undue burden on interstate commerce, or an undue burden on the national aviation system.

Comments: A wide spectrum of aircraft operators (including air carriers, foreign carriers, charter operators and general aviation operators), their trade associations (National Air Carrier Association (NACA), National Business Aircraft Association (NBAA), and International Air Transportation Association (IATA)), airline pilots, and an aircraft manufacturer object to the proposed rule treatment of this issue. They urge that the rule prohibit accelerated local phaseout of Stage 2 aircraft. Among the reasons presented is the argument that the Act distinguishes between airport operator "restrictions on Stage 2 operations and a phaseout." Cargo carriers, such as Burlington Air Express and Airborne Express, state that this position is necessary for an effective national noise policy. Other cargo carriers argue that the Act preempts all local Stage 2 restrictions.

Some scheduled carriers, including America West and United, express serious concern regarding the impact of local phaseouts, although these carriers did not suggest that the rule expressly preempt accelerated phaseout. Other carriers and the Air Transport Association of America (ATA) maintain that the rule must expressly preempt restrictions that would interfere with the ntional program, and a few carriers also argue that the Act preempts all local Stage 2 restrictions.

A charter airline asserts that the small number of "national charter aircraft companies" operate mainly Stage 2 aircraft, and they will be seriously affected by accelerated local phaseouts.

In contrast, airport operators (including Raleigh-Durham, Phoenix, and Oakland), local communities (including Bedford, Concord, Lexington, and Lincoln, MA), and citizens' groups (including National Organization to Insure a Sound-controlled Environment (NOISE), Citizens for Abatement of Aircraft Noise (CAAN), and Safe Air for the Environment (SAFE)) urge that the final rule clarify that accelerated local phaseout of Stage 2 aircraft is permitted. The airport trade associations, the Suburban O'Hare Commission, and several communities in California are especially critical of language in the NPRM suggesting that the FAA would view accelerated phaseout as needed only in exceptional circumstances. Another government entity argues that a Federalism Impact Study is necessary for a determination on this issue.

Even the key Chairmen of the House-Senate Conference Committee that drafted the Act differ as to whether the Act preempts phaseouts of operations by Stage 2 aircraft different in kind from the national phaseout. Chairman Ford comments that local phaseouts are preempted, while Chairman Oberstar states that airport operators have the unrestricted ability to impose local phaseouts.

Response: This final regulation is not the appropriate vehicle to make a determination whether, or to what extent, the Act, or the Federal transition schedule itself, forecloses local adoption of accelerated phaseouts. However, strong public policy and legal concerns militate against the adoption of any local phaseouts.

First, the Act in no way grants airport operators any authority they did not have prior to the Act. Under section 9304(h), 49 U.S.C. App. 2351(h), preexisting legal limitations on airport operators' authority are not affected except as required by applying the terms of section 9304. The courts have consistently recognized FAA's legal authority to challenge airport noise and access restrictions that are discriminatory, unreasonable, or impose an undue burden on interstate commerce. This authority is expressly preserved and recognized by the Act.

Second, the FAA has serious concerns that local restrictions accelerating the phaseout of Stage 2 aircraft may impose an undue burden on commerce and on the national aviation system. The Act envisions an orderly, equitable national system for removing Stage 2 airplanes. Accelerated local phaseouts can seriously affect carriers' scheduling and increase their costs, ultimately undermining both the national program and the efficiency of the national aviation system. The FAA is concerned that the individual impacts of piecemeal local restrictions compound geometrically when local restrictions are considerad at increasing numbers of key airports in the national system, such as those in New York, Chicago, and Los Angeles. While the harmful economic effects may be less obvious in any particular area of the country, they could have a cumultive affect, increasing the carriers' system costs. The FAA concludes that restraint on the part of airport operators is essential if the national phaseout program for an entire generation of Stage 2 aircraft throughout the national airport system is to be carried out effectively.

Third, any local accelerated phaseout could stand as an obstacle to the accomplishment of the uniform, orderly transition schedule mandated by the Act. For individual carriers, a piecemeal approach in which each airport selects its own phaseout dates could be disastrous. It could render orderly fleet management virtually impossible with respect to route adjustments, equipment substitutions, hushkit acquisition, and the purchase of Stage 3 aircraft.

Fourth, actions imposing local accelerated phaseouts may induce other airports to adopt similar or even more stringent local restrictions. On a national basis, there is little that can be done in the near term to change the overall composition of the U.S. fleet by the year 1995. The backlog of orders for Stage 3 aircraft already extends at least until then. A carrier deciding today to convert to an all Stage 3 fleet would find it impossible to do so in the near term. Thus, if major airports enact regulations expanding the prohibition on operations by Stage 2 aircraft, other airports have a difficult choice. They can either accept the additional noise that the other airports may export to them or react to these increased noise pressures by

enacting their own noise restrictions which would compound the threat to the national airport system. The adverse consequences of such an escalating noise control competition upon the national aviation system, the air carrier industry, and public access to air transportation are clear and unacceptable.

Wholly apart from the question of the direct impact of the Act and the Federal phaseout schedule on local authority, the FAA would carefully scrutinize any accelerated local Stage 2 phaseout, and any other restriction that comes to its attention. Airport operators, following review of the clear national scope of the phaseout mandated by the FAA, must thoroughly consider the effect of any local Stage 2 phaseout on commerce and the national aviation system.

The FAA anticipates that the airport operator will give particular attention to the Congressional mandate for a unified and consistent national phaseout process and to the potential harm to air carriers and the national aviation system of a series of individual airport phaseout requirements. The FAA stands ready to exercise its full authority to take whatever action is necessary to alleviate any excessive burden on commerce that might result from the implementation of an accelerated local Stage 2 phaseout.

Applicability of the Rule/Definition of Noise and Access

The definitions of "noise" and "access," and the description of rule applicability, influence both the scope and coverage of the entire rule. Procedures and requirements stipulated in the rule should reflect the nature of restrictions subject to the rule.

The proposed rule defined "noise" and "access" restrictions as restrictions on noise and access that affect the operation of Stage 2 or Stage 3 aircraft. An illustrative list of restrictions based on language of the Act and statutory exceptions were contained in the proposed rule. This illustrative list of restrictions includes limits on single-event or cumulative noise, noise budgets or allocations, direct and indirect limits on operations, limits on hourly operations, airport use charges that directly or indirectly control noise, and any other limit that controls noise. However, peak-period pricing programs, when the objective was to align the number of aircraft operations with airport capacity, and noise abatement operational procedures were generally excluded from provisions of the proposed rule.

Definitions contained in the proposed rule were developed from the language and direction of the Act.

The following questions were posed in the Notice No. 91-8 and relate to applicability and the definition of restrictions:

Is the proposed definition of "noise" and "access" restrictions too broad? If so, how should it be revised? Should an access restriction that is unrelated to noise be subject to the 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 used to circumvent the requirements for noise restrictions? Should a restriction or airport use charge that has an indirect effect of controlling noise be subject to this regulation?

Comments: Many comments were received on the definition of "noise" and "access" restrictions and on questions pertaining to the definition posed in the NPRM. There was no consensus on the proposed definitions or on answers to the questions posed in Notice No. 91-8.

Responses from airport operators, environmental groups, and private citizens indicate that the proposed definitions are too broad, especially with respect to "access" restrictions. Specific suggestions were made to limit applicability. Adams County Coordinating Committee, Raleigh-Durham Airport Authority, the City of Redlands, and the City of Tempe (in a joint submission) advocated limiting the term "restriction" to one that would regulate the number of aircraft or aircraft operations and discriminate among aircraft operations based upon noise produced by the operation. Another commenter suggests that noise and access restrictions be limited to those that include a restriction on operations of Stage 2 or Stage 3 aircraft. Other commenters, including the Airport Operators Council International (AOCI) and the American Association of Airport Executives (AAAE), maintain that the intent of the Act is to limit consideration of access restrictions to those where the primary effect and purpose is to reduce noise. These commenters recommend that access restrictions be excluded if they reflect limits imposed by the physical characteristics of facilities, such as runways and terminal buildings. Many respondents, including the Citizens League for Airport Safety and Serenity (CLASS), object to the inclusion of airport use charges that have the direct or indirect effect of controlling airport noise. Comments submitted by airport operators universally agree with the proposed exclusion of noise abatement operational restrictions such as preferred runway usage.

Comments from aircraft operators, individual businesses that rely on air cargo shipments, and the Chicago Association of Commerce and Industry either affirm the proposed definitions or advocate more inclusive definitions. Several commenters advocate applicability of the rule to all access restrictions, without regard to whether they directly or indirectly relate to noise. The Air Line Pilots Association (ALPA) suggests that the rule apply to any access restriction that is unrelated to physical obstacles. Airborne Express proposes adding restrictions that have either the direct or indirect effect of controlling access to the illustrative list of restrictions presented in the proposed rule. Many commenters agree with the proposed inclusion of restrictions that have the indirect effect of controlling noise. Several commenters, such as Florida West Airlines, provide examples of restrictions contained in different types of documents such as leases, environmental assessments, and government ordinances. They argue that these situations represent either a deliberate attempt to covertly impose noise restrictions on aircraft operations or a de facto restriction. Several commenters propose inclusion of noise abatement operational procedures or to subject such operational procedures to a safety review. Aircraft operators and allied groups, such as the Regional Airline Association (RAA) and ATA, argue that the proposed rule be changed to encompass peak-period pricing plans.

Response: The definitions of "noise" and "access" restrictions and the applicability of the proposed rule were primarily based on language of the Act. Subsection 9304(a) of the Act requires the establishment of a "national program for reviewing noise and access restrictions on operations of Stage 2 and Stage 3 aircraft." Clearly, the Act requires the review of both noise and access restrictions. In paragraph (b) of section 9304, the Act addresses restrictions on Stage 3 aircraft operations subject to review. Again, the Act explicitly references both noise and access restrictions and the paragraph provides an illustrative, but not exclusive, list of types of covered restrictions. The descriptive phrases "a limit, direct or indirect, on the total number of Stage 3 aircraft operations" and "any other limit on Stage 3 aircraft" are included in the illustrative list. The Act, therefore, contemplates a broad review of restrictions including those

that have an indirect effect on airport noise. The Act is silent on the types of noise and access restrictions on Stage 2 aircraft operations that are subject to notice and analysis requirements.

The definitions included in the proposed list were developed from the language of the Act. The proposed rule includes the several spacific kinds of Stage 3 restrictions listed in the Act. The definition of "noise" and "access" restrictions in the proposed rule also extended coverage to similar types of restrictions on Stage 2 aircraft operations. Because certain types of airport use charges have the effect of limiting aircraft operations and controlling airport noise, and because the Act contemplates a broad review of such restrictions, the proposed rule makes such charges subject to the rule. The proposed rule, however, exempted both peak-period pricing plans and noise abatement operational procedures. Peak-period charges, which align the number of aircraft operations with airport capacity, generally are not expected to change the cumulative noise exposure of an area (because they do not control noise), only the timing of operations. The expected purpose of such programs is to increase the efficient use of existing airport capacity and to provide financial resources to build additional capacity. Most noise abatement operational procedures were exempted because they are not expected to limit the total number or hours of aircraft operations. Further, such procedures must comply with other parts of the Federal Aviation Regulations that regulate flight safety. Most importantly, noise abatement operational procedures, like other operational matters, remain the ultimate responsibility of the FAA.

No compelling argument or evidence was presented by commenters that the intent of the Act was to include or exclude types of "noise" or "access" restrictions other than those defined in the proposed rule. For this reason, the rule incorporates the definitions of "noise" and "access" restrictions of the proposed rule with only one revision. Upon reviewing the comments, it was apparent that the rule's definition of restrictions needed to clarify that restrictions include—but are not limited to—provisions contained in documents, such as ordinances and leases, that limit or control noise and access. Section 161.5 has been revised to include that change.

Treatment of Stage 2 Aircraft Weighing Less Than 75,000 Pounds

The proposed rule treats all Stage 2 aircraft covered under 14 CFR part 36 noise criteria in a similar fashion, making no distinction based on a 75,000 pound weight criterion. Subpart C proposed to require airport operators to provide notice and consider comments on any proposed restriction with respect to Stage 2 aircraft, regardless of weight, but would not require FAA approval of the restriction. The preamble of the NPRM cites an FAA draft report, "Study of the Application of Notice and Analysis Requirements to Operating/Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," required by section 9305 of the Act, that supported this position. The FAA study points out that, under the Act's language, to exclude restrictions on these aircraft could have the effect of earmarking them for restrictions, and that nothing in the study's analysis suggests that it would be appropriate to give these aircraft less protection than heavier aircraft against local restrictions. The proposed rule solicited public comments on the question: Should Stage 2 aircraft weighing less than 75,000 pounds be treated differently from Stage 2 aircraft weighing more than 75,000 pounds?

Comments: The NBAA proposed that restrictions on Stage 2 aircraft weighing less than 75,000 pounds be subject to FAA approval using the same criteria as for proposed restrictions on Stage 3 aircraft. Comments from aircraft manufacturers and operators tend to support the NBAA arguments. The Gulfstream Aerospace Corporation supports the basic NBAA position, noting that the combination of high thrust-to-weight ratio, coupled with low wing loading and simplified high-lift systems, permit these aircraft to implement aggressive noise abatement procedures in complete safety. These comments include a graphic noise comparison of three Stage 2 business jets with four Stage 3 air carrier aircraft. The NBAA also proposes that FAA consider, as a minimum, providing in subpart C that no restriction on operations of Stage 2 aircraft weighing less than 75,000 pounds may be imposed without a separate analysis of costs, benefits, and alternatives for such aircraft.

The Midway Airport Tenants Association ask that Stage 2 aircraft under 75,000 pounds meeting the Stage 3 criteria of part 36, appendix 3C, for aircraft over 75,000 pounds remain exempt from the imposition of any new policy. Premier Jets opposes any further limitations constraining operation of its Lear Model 24 or 25 jets that are under 75,000 pounds maximum takeoff weight. Premier Jets comments that these aircraft are used for many emergency situations where people or equipment must be transported on very short notice, such as transporting organs for transplant patients and medical evacuation flights.

Responses from airport operators, environmental groups, and private citizens generally support the treatment of light Stage 2 aircraft as proposed. The AOCI and the AAAE note that at some airports these will be the noisiest aircraft that operate, and that at many other airports these aircraft may also significantly contribute to the noise problem. These two groups also claim it is important that airports be permitted to restrict for noise reasons the operations of the full range of aircraft, including those that carry few passengers, to increase efficiency of the national and local air transportation systems, as well as for provision of significant noise relief.

The Massachusetts towns of Bedford, Concord, Lexington, and Lincoln, in a joint response, comment that it is essential that the FAA retain this provision in the final regulation, and quote an FAA statement, "Aircraft noise heard on the ground is the result of complex factors in the design and operation of * * * aircraft, and weight alone cannot be used to determine noise produced."

The City of Grapevine, Texas, comments that a National Noise Policy should include all aircraft, regardless of weight. An exclusion of aircraft weighing less than 75,000 pounds would be without logic, the commenter argues, because all aircraft produce noise. They further suggest that exclusion of some aircraft based on weight would probably be insupportable by any scientific data.

The Massachusetts Port Authority comments that appendix C of 14 CFR part 36 establishes different noise limits for the different stage designations for aircraft both at weights above 75,000 pounds and for weights below 75,000 pounds precisely because of differences in the noise levels produced by such aircraft relative to other aircraft.

Palm Beach County, Florida, comments that, despite smaller jet aircraft's ability to use noise abatement procedures unavailable to heavier aircraft, its experience indicates that these aircraft operators are often less diligent about using noise abatement procedures. They also note that citizens often complain about specific noise events caused by general aviation jets.

Response: The FAA has considered several options for resolving this issue. The first option would be to retain the rule as presented in the proposed rule. This position is widely supported among

commenters. The option takes into consideration that, at some airports with low levels of ambient noise and few or no airline flights, small Stage 2 aircraft may be the dominant source of noise. Compared to other options, this option would result in an intermediate number of local access restrictions for aircraft under 75,000 pounds. All new light turbine powered aircraft being produced today are Stage 3 aircraft, and retirement/attrition is reducing the number of older Stage 2 light aircraft that are in service. This option, however, would inhibit business and commercial flights at general aviation facilities that predominately serve aircraft in this category.

The FAA predicts that this option, if adopted, could encourage local restrictions. Such restrictions could necessitate the retrofitting or hush-kitting of up to 960 aircraft at a cost of up to $2 million per aircraft. This represents a quarter of the total fleet of turbojet aircraft weighing less than 75,000 pounds in the United States.

The second option would include Stage 2 aircraft under 75,000 pounds in the regulatory provisions applicable to Stage 3 aircraft (subpart D of the rule) for processing proposed restrictions, and thereby requiring FAA approval. This is supported by NBAA and the Midway Airport Tenants Association. It also reflects the fact that many small Stage 2 aircraft make less noise than some larger Stage 2 air carrier aircraft. This option would require FAA approval of local restrictions on small jets used primarily by the business community. It would be consistent with treatment of Stage 2 aircraft in part 91. Conversely, this option would impose a heavy regulatory burden on those small local airports where business jets are the primary source of noise. It also would create a precedent of not treating all Stage 2 aircraft the same.

The third option would be to find the Act inapplicable to Stage 2 aircraft weighing less than 75,000 pounds, thus allowing imposition of local restrictions on these aircraft without the regulatory requirements or safeguards created by the Act. This would be consistent with the discretion provided the Secretary in section 9305 of the Act, and it is addressed in the NPRM and the FAA preliminary study. This option would reduce the burden of part 161 on airports desiring to restrict operations of small Stage 2 aircraft, permitting rapid response to local conditions. Conversely, it could generate the highest number of local airport access limitations and the greatest inconvenience for smaller jet aircraft.

The fourth option would be to treat Stage 2 aircraft as Stage 3 aircraft only at large airports (as defined by number of annual operations). This option recognizes that perceptions of aircraft noise levels are dependent upon ambient background noise: operation of Stage 2 aircraft at larger airports might be less objectionable. Defining large airports for this purpose would be difficult, and use of some distinction based on airport size could result in allegations of discrimination and preferential treatment by both air carriers and airport neighbors. It also could result in sending more non-air carrier aircraft to large airports.

The fifth option would allow determinations regarding treatment of light Stage 2 aircraft on a case-by-case basis. This option is similar to the Stage 3 restriction-approval process, except some airport operators may be exempted from the approval process entirely. This has the further disadvantage of requiring the FAA to develop criteria to determine which airports would be required to use the Stage 3 approval process for small Stage 2 aircraft.

The sixth option would be revision of the required analyses in subpart C, § 161.205, to require airport operators to include in the required analysis separate detail on costs and benefits of a proposed restriction on Stage 2 aircraft under 75,000 pounds, if such aircraft are operated at the airport. Such action would reflect the specific focus of the Act in section 9305 on restrictions on Stage 2 aircraft weighing less than 75,000 pounds. In addition, the FAA anticipates that a comprehensive analysis of a proposed restriction would typically examine the proposal's impact on each class of aviation user at the airport that may be affected by the restriction. This detailed consideration of impacts should create a more appropriate restriction. If a separate analysis did indicate that light Stage 2 aircraft do not significantly contribute to airport noise, the additional analysis may permit the airport operator to afford relief to light Stage 2 aircraft.

The final option would be to permit restrictions on Stage 2 aircraft under 75,000 pounds based on absolute noise levels compared to the noisiest Stage 3 aircraft at an airport. However, stage categorization of aircraft has historically been defined in terms of aircraft noise levels and weight capacities. The noise level related to approach, takeoff, and sideline noise parameters is perceived differently depending on the environment in which the noise occurs. This option could be viewed as arbitrary and relatively ineffective by both affected aircraft operators and airport-area residents.

The final FAA report, "Study of the Application of Notice and Analysis Requirements to Operating Noise/Access Restrictions on Subsonic Jets Under 75,000 Pounds," concluded, after careful consideration of the various issues involved and the comments received from the public, that section 9304, as it pertains to Stage 2 aircraft, provides protection to all segments of aviation and to the general public. The study also found that all these interests would be better served if the analyses of the impacts of the proposed restriction on Stage 2 aircraft at an airport also include separate detail on the costs and benefits of the proposed restriction with respect to the operations of Stage 2 aircraft weighing less than 75,000 pounds.

After extensive consideration of the above options, comments, and the FAA final report, the FAA has determined that restrictions on the operation of all Stage 2 aircraft should be treated under subpart C, with the requirement that the analysis provide specific detail on the benefits and costs of the restriction with respect to Stage 2 aircraft weighing less than 75,000 pounds.

Burden of Notice and Analysis Requirements

Consistent with the Act, the proposed rule would require notice and analysis of proposed restrictions on aircraft operations. At issue is the level of burden imposed by the notice and analytical requirements: did the proposed rule strike an appropriate balance between informing interested parties of the details necessary to adequately evaluate a proposed restriction and the burden on the applicant to provide notice and produce such analysis?

The proposed requirements for notice were essentially the same for restrictions on Stage 2 and Stage 3 aircraft operations. They included publication in a newspaper with national circulation; in an areawide newspaper of general circulation; and in aviation trade publications. The airport operator would be required to notify, in writing, aircraft operators serving the airport; those interested in serving the airport; the FAA; and each Federal, state, and local agency with land-use control jurisdiction or facilities within the noise study area. The notice was required to include a description of the restriction, discussion of the need for the restriction, identification of aircraft expected to be affected, and an analysis

of the proposed restriction or announcement of the availability of the analysis.

Proposed analytical requirements for restrictions on the operation of Stage 2 aircraft were less stringent than those for Stage 3 aircraft. Proposed restrictions on Stage 2 aircraft operations were to be analyzed with respect to requirements set forth in the statute: (1) Costs and benefits of the restrictions; (2) alternative options considered; and (3) comparative costs and benefits of imposing nonaircraft alternatives. The proposed rule required the use of accepted noise measurement systems and economic methodology in preparing the analysis. It did not specify detailed, required analytical components, but rather referenced the suggested analysis for subpart D (restrictions on Stage 3 operations) as helpful guidance regarding analytical elements. Analytical requirements for proposed Stage 3 restrictions were more prescriptive, requiring that applicants submit specific information and recommending other types of analysis that might be considered adequate evidence of fulfillment of the six statutory conditions for approval.

A number of questions were posed in the NPRM about the notice and analysis requirements. They included whether detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those proposed for stage 3 aircraft operations, should be specified in the rule; whether all applicants should be required to consider a specific list of costs and benefits in the analysis of proposed restrictions on Stage 3 aircraft operations; and whether the proposed analysis requirements were appropriate. Commenters addressed these questions and the general issue of burden of notice and analysis requirements.

Comments: Comments from air carriers generally support the notice requirements or recommend stricter requirements, and airport comments typically maintain that the requirements are too costly and burdensome. Many airports comment that the proposed notice requirements far exceed the requirements of the statute. The Port Authority of New York and New Jersey recommends no direct notice, arguing that it is too costly and difficult to know specifically who should be notified. They state that identifying all agencies in the 65 L_{dn} would be impossible and that the Act requires only publication notice. A number of airports and towns from Massachusetts comment that requirements are burdensome and that airports should instead be allowed to follow their normal local notice procedures and let FAA take more responsibility for national notice. Several airports comment that the rule should allow airports to provide notice as required under state or local laws rather than specifying notice in the rule.

The City of Long Beach, California, and AAAE/AOCI believe direct notice is too burdensome, especially for general aviation, and that notice should be provided solely through publication. The NBAA supports direct notice, but believes that direct notice requirements alone are not adequate to reach general aviation users and that notice should also be served on the NBAA and other trade associations for members who operate infrequent itineraries.

SAFE believes publication alone is not adequate and that direct notice is necessary. Carriers generally support the proposed notice requirements, and Federal Express and Airborne Express recommend that notice be given directly to the office of the President of each aircraft operator serving the airport.

While not an aircraft operator, Gulfstream Aerospace Corporation would like to receive notice of restrictions as they affect Gulfstream-manufactured aircraft. Northwest Airlines comments that all aircraft operators serving an airport should receive notice, not just those expected to be affected by the restriction, since equipment type is frequently changed.

With regard to notice requirements for agreements, CLASS and the City of Long Beach, California, believe that direct notice for agreements should be deleted. A number of airports believe that parties to agreements will have already received notice and no more than publication is required for potential new entrants, because new entrants with serious interest in the airport would have already contacted them. Several Massachusetts municipalities state that there should be only limited information required in a notice of an agreement, as an operator can contact airports for more information. The ALPA, on the other hand, believes that the notice requirements for agreements and restrictions on Stage 2 aircraft operations are reasonable and necessary.

A number of organizations, such as the Air Freight Association, Airborne Express, Florida West Airlines, McDonnell Douglas, and the Aerospace Industries Association (AIA) recommend that the FAA provide notice of Stage 2 restrictions in the **Federal Register**, as is required for Stage 3 restrictions.

Response: The notice requirements for agreements and restrictions have been modified as a result of the comments. The requirement for notice publication in a newspaper with national circulation and in aviation trade publications has been deleted. The cost of these requirements could be as much as $20,000, which is burdensome, especially for smaller airports. By eliminating the requirement for published notice in a national circulation newspaper, the cost of public notice is reduced.

In place of broader applicant published notice, FAA will provide national notice by publishing a brief announcement of proposed restrictions on Stage 2 aircraft operations in the **Federal Register**. (The rule retains the more comprehensive FAA notice in the **Federal Register** for proposed restrictions on Stage 3 aircraft operations.) This process should ensure wide notice to all interested parties. In addition, airports will be required to post a notice of the proposed restriction or agreement in the airport in a prominent location accessible to airport users and the public.

Requirements for direct notice are retained because this is the most effective method to ensure sufficient notice. However, the rule more clearly defines who is to be notified. For example, the requirement to notify air carriers has been changed. The proposed rule required notice to aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that were expected to be affected by the restrictions. The final rule continues the requirement to notify potential new entrants that are known to be interested in serving the airport. But rather than notify all of the operators serving the airport, the rule requires notice to aircraft operators providing regularly scheduled passenger or cargo service, operators of aircraft based at the airport, and operators of aircraft known to routinely provide nonscheduled service to the airport that are expected to be affected.

Airport operators are still required to publish notice in an areawide newspaper of general circulation, but the newspaper's circulation must cover all land-use planning jurisdictions included in the airport noise study area. The requirement to directly notify Federal, state and local agencies has been limited to those with land-use control jurisdiction within the airport noise study area, such as the Department of the Interior. The requirement to notify all agencies with facilities in the airport noise study area

has been deleted. The only change to the information required in the notice is that, for Stage 3 restrictions, the airport operator must indicate any alternative restrictions being considered and submitted. The final rule attempts to minimize the notice requirements while ensuring that all interested parties are informed.

Comments: Comments on the burden of analytical requirements for proposed restrictions on Stage 2 aircraft operations were divided, with air carriers and aircraft manufacturers supporting more stringent analytical requirements, and local airports and noise groups contending that the proposed analytical requirements were burdensome and exceeded FAA's statutory authority.

The Air Freight Association, Federal Express, Airborne, ATA, McDonnell Douglas, and Northwest Airlines all generally agree that the analysis required for proposed restrictions on Stage 2 aircraft operations should be the same as that for restrictions on Stage 3 aircraft operations to insure uniformity across airports. They maintain that analysis should be mandatory and sufficiently detailed to insure that a complete evaluation of the restriction has been conducted.

While stating that the requirements are reasonable and necessary, ALPA would like to see safety analysis of the restriction, prior to the comment period, as a precondition if the proposed restriction affects flight procedures in any way and, if so, a showing of no safety impact.

The National Airport Watch Group (NAWG); NOISE; the Port Authority of New York and New Jersey; the City of Long Beach, California; the towns of Bedford, Lincoln, Lexington, and Concord, Massachusetts; and the Suburban O'Hare Commission comment that the requirements for Stage 2 analysis are specified in the Act—FAA has no authority to impose any further requirements on airports. These commenters note that the proposed analytical requirements will stymie local attempts to restrict aircraft.

Response: The FAA considered four options in responding to the concerns of commenters. The first option would be retention of existing analysis requirements. There were several advantages to this option. By restating the statutory provisions, the final rule text provides applicants with one central source of information on the analysis requirements. By adding the requirement to use noise measurement methodologies specified in 14 CFR part 150, and accepted economic methodology, an element of standardization would result, facilitating review of the proposals by both the public and air carriers. Finally, it is important to note that the proposed text's reference to the analysis requirements for proposed restrictions on Stage 3 aircraft operations as suggesting useful elements of an adequate Stage 2 restriction analysis was not a requirement, but rather a source of information.

Conversely, the use of prescribed noise measurement systems and accepted economic methodology may be burdensome for some selected restrictions at some airports (probably at smaller airports).

The second option considered was deletion of the requirement to use the noise measurement systems consistent with 14 CFR part 150.

While the perception of burden would be reduced, and airport operators would be allowed to utilize whatever noise measurement systems they deemed appropriate to the airport, valuable consistency in measurement across airports would be lessened. It would probably result in the public and, particularly, air carriers having considerable difficulty in effectively analyzing the effects of a proposed restriction.

A third option considered was deletion of the reference, in Stage 2 analysis requirements, to the analysis requirements for proposed restrictions on Stage 3 aircraft as providing useful information. Again, the perception of burden would be reduced, but some airports with little experience in analyzing operating restrictions may be disadvantaged by deleting reference to information that may be useful.

Finally, a fourth option considered was to require mandatory analysis similar to that for proposed restrictions on Stage 3 aircraft operations (subpart D) for a proposed restriction on Stage 2 aircraft operations. This option would insure that proposed restrictions on Stage 2 aircraft would receive a comprehensive evaluation that may, in some instances, cause airports to reconsider the merits of the proposal.

Conversely, many noise groups and airports would consider this option onerous, and an intrusion on the powers of state and local governments. Airports indicate in their comments that they consider the Act to give them complete authority to restrict Stage 2 operations without Federal intervention.

The final rule retains the analytical requirements in the NPRM, except that the requirement that analysis must reflect current airline industry practice is deleted. As noted above, for airports proposing to restrict the operations of Stage 2 aircraft weighing less than 75,000 pounds, a separate analysis for this class of aircraft must be conducted.

Comments: Regarding the analysis requirements for proposed restrictions of Stage 3 aircraft operations, airports and noise groups again view the analysis required for restrictions on Stage 3 operations as too burdensome and beyond the scope of the Act, questioning how they would be able to comply with the requirements. Conversely, air carriers and aircraft manufacturers favor more detailed, mandatory analytical requirements to ensure standardization and even-handedness.

The ATA comments that requisite analysis content must be spelled out precisely. The Air Freight Association wants FAA to explain in the preamble how the analysis relates to answering the six statutory conditions. ALPA comments that, as with Stage 2, safety analysis should be a precondition to notice, comment, and approval.

The Chicago Association of Commerce and Industry states that beyond immediate financial impacts, the analysis must include the negative effect on travelers and shippers as needed air service is lost. The benefit side of analysis is highly susceptible to exaggeration—real estate values and other speculative benefits should be eliminated, according to this commenter.

The United Parcel Service (UPS) comments that any restriction on Stage 3 nighttime operations should be viewed as a per se burden on interstate commerce.

Airborne Express supports requirement of precise analytical components, contending that a general statement supporting six conditions for approval is not sufficient—there must be substantial evidence.

NAWG states that the proposed requirements deliberately stack the deck against local restrictions on Stage 3 aircraft operations. They want the analysis to include major health costs, occupational injuries, and the detrimental effect of noise on education.

NOISE wants FAA to add health effects in the cost/benefit calculation—they believe that the proposed analytical components are weighted more heavily toward costs, not benefits. This commenter also believes that the FAA, not the applicant, should make a determination on whether the six statutory conditions have been met.

The Metropolitan Washington Council of Governments believes that the proposed analysis requirements go far beyond the Act. It does not believe a mechanism is available for obtaining

airline specific cost and operational data. It notes further that many arcane and speculative cost categories should be deleted as few categories of benefits are mentioned.

The City of Los Angeles wants FAA to delete the requirement of a "complete draft environmental assessment," stating that review and approval/disapproval does not constitute a major Federal action: therefore no environmental assessment is needed. This commenter recommends that only an environmental checklist be prepared.

The Port Authority of New York and New Jersey notes that the terms "currently accepted economic methodology" and "reflecting current industry practice" are vague, undefined, and confusing.

The Suburban O'Hare Commission believes that benefits of noise reduction are not adequately addressed, suggesting that the FAA and communities work together to develop mutually acceptable methodology for determining the benefits of noise reduction to communities.

Response: Again, four options were considered in responding to concerns of commenters. The first was to retain the analysis requirements in the NPRM.

These analysis requirements were developed to allow the FAA to make an informed decision regarding the merits of the proposal and the adequacy of information to support, through substantial evidence, the six statutory conditions for approval.

However, as structured in the NPRM text, the analysis requirements were perceived by some commenters as excessively burdensome. Moreover, they did not understand how the information would be utilized in the decision process.

The second option considered was to restructure the analysis requirements to more effectively align the requirements with the conditions for approval. Under this option, the burden would be reduced as applicants better understand how their analysis will be used in evaluating the adequacy of substantial evidence. Further, based on the restructuring of that section, applicants may be able to eliminate portions of the analysis not deemed to be appropriate to their proposal. But by assigning all analytical components to the requirements of substantial evidence of the six statutory conditions, some flexibility afforded to the applicant may be lost.

Another option considered would be to require that all applicants respond to a specific mandatory list of analysis components. All airport restrictions would be evaluated utilizing standardized requirements, thereby eliminating inconsistent treatment among airports. Furthermore, all proposed restrictions would receive a thorough evaluation, satisfying aircraft operator concerns.

On the negative side, however, a mandatory list of analysis components would force all applicant airports to provide data that may be irrelevant to a specific airport or type of restriction. The Noise groups already view the analytical requirements as too burdensome, infringing upon local airports' ability to control noise. In addition, the costs associated with a comprehensive analysis requirement for all airports may prove to be too expensive for some airports.

The suggestion to shift the burden of analysis to the Federal government was explored. Through this alternative, consistency would be assured, and costs to the airport proposing a restriction would be minimized. However, since the FAA has only 180 days in which to evaluate a proposal, there would be insufficient time and resources to conduct the research necessary to analyze a proposed restriction.

The final rule restructures the analysis components to more clearly align the analysis requirements with the required evidence for the six conditions for approval. This realignment does not add any requirements to those stated in the NPRM. The FAA finds these analysis requirements are the minimum necessary to ensure that the six conditions for approval are met. Restructuring the proposed text in the final rule should clarify which components of the analysis correspond to the conditions for approval and thereby facilitate preparation of relevant information by the applicant.

Comments: Several other issues regarding the general burden of the process were raised in comments and are appropriately addressed here. Among the comments that generally address the application process, the City of Long Beach urges that the applicant, rather than the FAA, determine whether an application is complete; and that the FAA act upon the merits of the submission instead of requesting further information.

Response: The FAA is cognizant of the time and expense involved in preparing an application. However, it is FAA's opinion that applicants are better served by an opportunity to supplement an application rather than restart the application process merely due to the lack of certain information. Moreover, the choice to submit requested supplemental information remains with the applicant. The applicant can either resubmit and supplement its application, not respond to the information request, or advise the FAA that it will not provide additional information. FAA disapproval of an initial incomplete application would be unfairly prejudicial to an applicant, and the potential ramifications of disapproval necessitate that such action be taken only when all requisite information has been provided.

Comments: The City of Long Beach also requests that the applicant be allowed to respond to comments submitted on the proposal or during reevaluation at any stage of the process.

Response: While not explicitly addressed in the regulatory text, both the NPRM and the final rule permit applicant response to comments, either through formal submissions to the applicant's own docket or to the FAA, as appropriate. Thus, the FAA finds that no additional clarification is needed.

Comments: There were a number of general comments that the application process is too lengthy and excessively time consuming.

Response: It should be noted that the time required for analysis and other document preparation is outside of FAA purview as it is determined largely by the Act and by the applicant—depending upon what data, analysis, and evidence is necessary to substantiate a proposal. These requirements will vary with the unique situation of the applicant and the restriction proposal. Moreover, the FAA will make a determination on an application within 180 days of receipt of a complete application. Further, the requirements for notice and opportunity for comment, while time consuming, are statutorily required, and serve a valuable function.

Comments: The Maryland Aviation Administration and the Minneapolis/St. Paul Metropolitan Airports Commission suggest that the rule provide for coordination between the FAA and the applicant, before formal application submittal, to ensure early identification and resolution of problems.

Response: The FAA finds that such a provision is unnecessary since FAA program office staff are typically available for queries regarding program requirements. Additionally, as usual with a new program, the FAA recognizes the particular importance and value of program staff accessibility to advise and direct applicants during the preparation of applications under new-program requirements, and will make such assistance available on an informal, as-requested basis.

Noise Study Area and Metrics

The proposed rule defined the study area for part 161 analyses as that area surrounding the airport within the Day-Night Average Sound Level (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; cultural and historic sites). Part 150 defines, for its purposes, all land uses outside the DNL 65 dB contour (noise levels less than 65 dB) as normally compatible. Additionally, the part 150 definition states that local needs or values may dictate further delineation based on local requirements or determinations. The FAA has approved, under the part 150 program, definitions of noncompatibility that are broader than those delineated by the DNL 65 and that are at some variance with Table 1 of part 150. In each case the FAA found that, in view of the particular local circumstance, the broader definition of noncompatibility was reasonable. The FAA has never taken the position that such an action would set a precedent for changing the overall definition of compatible land uses as shown in Table 1 of part 150. Thus, part 150 permits, for reasonable circumstances, a degree of flexibility in determining a study area and the compatibility of land uses to noise.

The proposed rule prescribed the yearly DNL calculated in accordance with the specifications and methods prescribed in appendix A of 14 CFR part 150 as the noise measurement methodology for use in part 161 analyses (§ 161.9(b)).

The first issue is: Should the DNL be prescribed as the only noise measurement for part 161, or should other factors be considered?

Comments: Comments from two major aircraft operator groups, NBAA and ALPA, support the proposed rule in prescribing the DNL as the only noise methodology for use in part 161. The ALPA comments specifically support the DNL methodology and criteria as the baseline requirement, as used in part 150. The NBAA comments that the noise measurement systems and land-use categories used in part 150 should be employed in this regulation.

Comments from two major air freight operators, Airborne Express and Federal Express, support use of the DNL methodology, but with the deletion of the 10 dB nighttime noise penalty that is built into that methodology. They believe that the 10 dB penalty would exaggerate the benefits.

Responses from airport operators, environmental groups, and private citizens generally request that additional metrics, especially the single-event, be included in the required analyses. These commenters believe that the noise measurement system should include both single-event and cumulative metrics.

San Francisco International Airport suggests that each airport operator be permitted to use any reasonable or accepted noise measurement system. Some airport area-residents request that the FAA incorporate airport ground noise into the DNL.

One commenter notes that the DNL does not pick up effects of individual jetliners and large numbers of small aircraft. The Citizens Air Rights Organization comments that DNL underestimates the importance of the frequency of noise events.

The Environmental Protection Agency (EPA) comments that noise-related impacts, such as sleep disturbance and speech disruption (measured over a less-than-24-hour period), must use another noise-measuring metric, perhaps single event (SEL) or equivalent sound level (Leq).

The City of Grapevine, Texas, comments that a national noise policy should abolish what it calls the outdated, arbitrary DNL noise metric for noise compatibility and utilize instead numerous comprehensive noise metrics. This commenter recommends that the rule mandate a comprehensive set of metrics such as Ldn, Lmax, SEL, TA, etc., to determine true impacts caused by all aircraft, regardless of weight or altitude. This commenter suggests that the 24-hour averaging methodology is inadequate and that noise events are underemphasized.

NOISE comments that the DNL metric is increasingly seen as an inadequate measure of the actuality of aviation noise experience. Thomas Murray comments that the DNL is not realistic and is based on synthetic simulations rather than measurement. This commenter does not believe that DNL is current with recent research results. Dennis O'Sullivan comments that the DNL is based on having windows closed; he likes to leave windows open during pleasant weather and not be a prisoner in his own home.

James Shrader, Raleigh-Durham, insists that the DNL does not work for noncontinuous noise environments and suggests that DNL consider noisy periods of a few days or weeks in addition to the yearly average. He emphasizes that adverse impact occurs if one's speech is disrupted an average of ten times in any single day.

Response: The FAA has considered several options in resolving the noise metric issue. The first option would retain the proposal without change. This option recognizes that the DNL metric is well-tested, has been used extensively with excellent results, and is fully compatible with part 150 and the environmental metric used by the FAA and several other Federal agencies. If this option is abandoned, untested and potentially nonuniform noise metrics would be introduced into the part 161 process. The part 161 criteria would no longer be compatible with 14 CFR part 150, or with the environmental analysis criteria utilized by the FAA and several other federal agencies.

The second option would modify the proposal by removing all prescription of noise metric from the regulatory text and only referencing 14 CFR part 150, which has historically included the DNL metric and the 65 dB contour among its requirements. However, as previously discussed, the flexibility available under 14 CFR part 150 responds to most of the concerns expressed by the commenters. While this option would retain the FAA's tested and proven metric, it would assure that the flexibility inherent in noise assessment under 14 CFR part 150 to supplement DNL with other analyses is also fully available to part 161 applicants. In addition, it would guarantee full compatibility between the two regulatory parts, and any future changes made to the part 150 metric would automatically be incorporated into part 161 by reference.

However, some commenters complain that the NPRM is already too much like part 150. NOISE comments that the part 150 process is used to prevent localities from devising and enacting noise restrictions tailored to local circumstances; to discourage innovation; and to further sanctify the DNL metric. NOISE recommends that alternative approaches to the mandated part 150 process be permitted. Other commenters object to the 10 dB noise penalty incorporated into the DNL for assessment of "benefits," but not for part 150's noise compatibility purposes.

The third option would modify the metric to explicitly incorporate other criteria that would provide data on aircraft single-event and ground noise, less-than-full-year noise averaging, and windows-open situations. The cumulative effects of all the single events are already incorporated into the yearly DNL. The part 150 process permits consideration of ground noise. Long-term noise exposure is the accurate measure of community annoyance and land-use compatibility. In regions having significant "windows-open" conditions, the part 150 process

permits a degree of local adjustment to the guidelines for noise-compatible land uses in Table 1 of 14 CFR part 150.

The fourth option would permit each airport operator to select the metric(s) and methodology best suited to its own particular local conditions in lieu of using the DNL. Although offering maximum flexibility, this could quickly lead to a confusing array of approaches with significant room for error or nonuniform treatment of airport users and airport neighbors. Further this option would put the part 161 criteria at odds with all other noise compatibility criteria, including criteria jointly agreed to by the FAA and several other Federal agencies, and would create chaotic mix of noise standards across the country.

After careful consideration of comments received, the FAA has determined that the proposed rule text should be modified by removing the prescription of noise metric from part 161 entirely and referring specifically to 14 CFR part 150. Such reference both accommodates the statutory requirements of the Aviation Safety and Noise Abatement Act of 1979 and provides a degree of local adjustment to noise impact, as noted above.

The second issue is: Should the DNL 65 dB contour be prescribed as the outer limit of the Airport Noise Study Area (ANSA)?

Comments: Comments from NBAA and ALPA support adoption of the 14 CFR part 150 methods and criteria for determining the airport noise study area.

Responses from airport operators, environmental groups, community organizations, and private citizens generally request that communities and airport operators be permitted to select their own study areas. In a joint submission, the Massachusetts towns of Bedford, Concord, Lexington, and Lincoln comment that airport operators should define their own ANSA's by reference to local land-use patterns and local noise-attenuation needs; the airport operator could demonstrate the need for a restriction by referring to local needs and expectations.

Joan Bell, Seattle, comments that adoption of the 65 DNL has not been through the public comment process required for a regulation. Arguing that the DNL 65 is outdated and its assumptions should be reassessed in response to evolving public opinion, this commenter insists that noise levels up to DNL 64 over residential areas are unacceptable.

Another individual comments that citizens are disturbed by aircraft noise in areas reaching far beyond the official DNL 65 noise contour. Citizens for Abatement of Aircraft Noise comment that the DNL 65 is not adequate to predict where aircraft noise begins to exact real social costs. This commenter states that there is anecdotal evidence that there are serious effects well below DNL 65. DeKalb County, Georgia, comments that noise policy should be based upon properly measured local noise contours.

The EPA recommends that the FAA modify the definition of ANSA so as to eliminate the perception that the area within the DNL 65 dB contour is the sole area to be considered for noise impacts, while retaining the flexibility of extending beyond the DNL 65 dB contour.

Grant Godwin asks that the FAA amend ANSA for "rural-urban" airports to "that geographical area surrounding an airport within the DNL 50 (versus 65) dB contour." This commenter believes that legitimate noise concerns certainly extend to the 55 DNL contour and, in many cases, beyond this point.

NAWG comments that the DNL 65 dB contour is used to minimize the actual noise problem and that every DNL 65 dB contour in the country encloses only one-fourth to one-third the actual area subjected to severe aircraft noise pollution.

The Port Authority of New York and New Jersey comments that the DNL 65 dB contour is not relevant in totally built up areas, and the only gauge as to the effectiveness of a noise restriction is the amount of the noise reduction in the appropriate DNL contour.

James Shrader, Raleigh-Durham, comments that the real threshold for the beginning of noise evaluation and general annoyance is DNL 55 dB. This commenter suggests that the FAA should not allow addition or modification of flight tracks or other procedures at an airport until the airport operator has obtained airport-compatible zoning or easements for properties that will become residentially incompatible.

The City of Torrance, California, comments that the average DNL 65 dB noise criteria does not adequately address the noise discomfort experienced by local residents, nor the actual conditions at general aviation airports. This commenter recommends that the criteria be lowered to the DNL 55 dB contour.

The Triangle Airport Noise Coalition comments that use of the DNL 65 dB contour to define "unsuitable for residential use" is totally inadequate, particularly for airports impacting suburban neighborhoods where the background noise is on the order of DNL 40 dB.

Response: The FAA has considered several options in resolving the noise study area issue. The first would adopt the proposal contained in the NPRM without change. As with the DNL metric, use of the DNL 65 dB contour for noise compatibility is well-tested, and is fully compatible with part 150 and the environmental methodology used by the FAA and several other Federal agencies. Further, it has had widespread Federal agency acceptance for a decade.

The second option would change the definition of the ANSA to permit unlimited flexibility to address all local conditions. This would allow an applicant to tailor the process to best suit that airport. The second option would also respond to most of the comments expressed by noise groups regarding the size of the study area.

Conversely, unlimited flexibility in defining the ANSA could result in each airport presenting a unique situation. Aircraft operators could be subject to a different set of rules at each airport. This option could also put the part 161 noise criteria at odds with all other noise compatibility criteria, including criteria established by the FAA and several other federal agencies, and create a chaotic mix of noise standards across the country.

The third option would revise the definition of the ANSA to refer exclusively to 14 CFR part 150. This overcomes the essence of the objections cited by the noise groups, as it incorporates the flexibility inherent in 14 CFR part 150. It also assures full compatibility between the two regulatory programs, including any future changes to part 150. Moreover, applicants would therefore need to be familiar with only one regulation regarding noise measurement.

Conversely, some commenters complain that the NPRM is already too much like part 150. Some proponents of greater flexibility in the rule would still be unsatisfied.

After consideration of the above options and pertinent comments, the FAA has revised the definition of the ANSA in the final rule to permit the applicant airport operator the same flexibility as that provided under part 150.

The Relationship Among Part 161, Local Land-Use Responsibilities, and Noise Liability

In the preamble to the NPRM, the FAA noted that section 9306 of the Act provides for Federal liability "only" to the extent that a taking has occurred as a "direct result" of that disapproval. Based on this statutory language, the

FAA suggested that one factor to be considered in determining whether Federal noise liability can attach to a particular disapproval would be whether the airport operator has made a reasonable effort in its own behalf to assure land-use compatibility in the vicinity of the airport. If a pattern of land-use management by local government has resulted in land-use incompatibilities that have led the airport to propose Stage 3 restrictions that cannot meet the approval requirements of the Act or part 161, those land-use incompatibilities should be considered in determining whether any takings that occur following disapproval are in fact the "direct result" of the disapproval itself.

The preamble of Notice No. 91-8 also noted that among the factors to be considered by the FAA in approving or disapproving a restriction on Stage 3 aircraft would be nonaircraft alternative measures that have been employed to achieve land-use compatibility. In particular, the preamble cautioned airport operators, local jurisdictions, and others not to "interpret sections 9304(d)(2) and 9306 as an invitation to relax or delay responsible programs for compatible land use," and encouraged use of the part 150 planning process. It also referred to airport development aid grant assurances that contractually obligate federally funded airports to use all reasonable means to restrict the use of land near the airport to compatible activities.

Consistent with the above, the preamble explained that the proposed regulation was not intended to affect traditional local responsibility for land-use measures.

Comments: Several comments were received on this issue. The airport trade associations and Adams County, Colorado, request that the rule be silent on this issue and allow the issue to be resolved by the courts. This view is shared by other communities and by various citizens groups, including the Maine/New Hampshire Voice, that finds the land-use question raising issues of state's rights. The National Association of State Aviation Officials (NASAO) also asserts that land-use planning responsibilities should be left to the state.

The City of Grapevine, Texas, requests that the final rule require airport operators to cooperate with local community governments adjacent to the airport. In contrast, NOISE argues that an airport's land-use policies should be irrelevant because in many cases other jurisdictions have land-use authority.

NAWG points out that the scheme of judicial remedies can be complex. It urges the FAA to state specifically how the Act and this rule affect state and local liability and to define the scope of Federal liability. This commenter notes, in particular, that the NPRM does not address shared liability where part of the injury (the taking) is the Federal share and other parts (e.g., nuisance, property repair) remain State-law claims against the airport. NAWG expresses concern that failure to clarify this issue may leave homeowners without remedy. The City of Raleigh-Durham also urges the FAA to further define the factors it would consider in determining whether to accept liability.

Two airport operators suggest that the FAA has attempted to improperly avoid liability for disapproval of restrictions on Stage 3 aircraft by tying Federal liability to local land-use planning efforts. They argue that, in some cases, operating restrictions may be the only feasible means of assuring noise compatibility.

Response: After careful review and consideration of these comments, the FAA has determined that it would not be appropriate to address the issue of liability in the regulation itself. The FAA agrees with the argument that this is an issue that will ultimately be resolved by the courts on the basis of specific claims for damages following specific FAA actions. However, the following discussion is intended to guide airport operators, FAA personnel, and airport neighbors concerning the vital role played by land use controls in the ultimate exposure of specific properties to certain noise levels. It should be noted that this discussion is advisory only, and does not constitute part of the regulation adopted herein. It is merely intended to further explain the FAA's understanding of the effect of the Act on the issue of liability.

The FAA agrees that land-use control is exclusively a state and local responsibility, and cannot be regulated by the FAA. Accordingly, the FAA has no authority to adopt suggestions that the regulation require land-use cooperation between the airport operator and other jurisdictions surrounding the airport. The FAA also agrees that, except for the limited case of the taking-based liability specified in section 9306 of the Act with respect to disapproved restrictions on Stage 3 aircraft, the Act did not change the liability normally borne by the airport operator under *Griggs* v. *Allegheny County*, 369 U.S.C. 84 (1962). Neither the Act nor part 161 alter any of the remedies previously available under state or local law with respect to airport noise.

Contrary to the opinions expressed by some commenters, the FAA continues to be of the view that the Act provides a basis for retaining the placement of liability where it was before the passage of the Act, and where the failure to adopt appropriate land-use controls has been a significant cause of noise impact on neighboring properties. Thus, the language of the statute suggests that the scope of liability is narrow. The statute specifies that the Federal government "shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval." The "direct result" language in particular suggests that the purpose of section 9306 was not a wholesale shift of liability to the Federal government. This will be an important consideration in determining whether a taking has occurred as a "direct result" of the disapproval of a Stage 3 restriction.

In addition, section 9304 of the Act explicitly states that the statute does not supersede existing law. Under the Airport Improvement Program (AIP) grant assurances and section 511(a) of the Airport and Airway Improvement Act of 1982 (AAIA), airport operators have an obligation to undertake reasonable land-use compatibility measures. The Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. App. 2101 *et seq.*) provides for Federal approval of comprehensive noise compatibility programs, including effective land-use measures, with incentives provided in the form of Federal financial assistance. Interpreting section 9306 to allow airport operators to avoid liability for inadequate land-use planning efforts merely by proposing an impermissible restriction on Stage 3 aircraft would vitiate these provisions.

Consistent with the above, the airport operator's efforts at land-use control should be a factor to be considered in determining, under the Act, whether there are nonaircraft restrictions that could achieve noise benefits more effectively than a restriction on Stage 3 aircraft. The ability of an airport operator to attain the benefits of an access restriction through the reasonable exercise of land use control powers may be a factor to be considered in determining the reasonableness of a proposed restriction. These determinations will be made on a case-by-case basis.

Comments by Subpart

Having discussed above seven general issues, comments thereon, and FAA responses that influence the

overall character of the final rule, the following sections discuss comments on individual subparts of the rule and FAA's response to these comments.

Subpart A proposes general provisions and addresses the purpose, applicability, and limitations of the rule as outlined in the Act. It defines common terms used throughout the proposed regulation, specifies limitations, and designates noise measurement systems.

Section 161.1 Purpose

This section remains unchanged from the proposed rule language in its delineation of the general purpose of this part.

Section 161.3 Applicability

This section addresses general applicability of this part. As mandated by section 9304 of the Act, this part applies 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 rule also applies to agreements entered into after the effective date of the rule. One revision to the proposed text was made in the rule with the addition of a new paragraph (b) to clarify that this part applies to amendments made after October 1, 1990, to restrictions in effect on that date where the amendment reduces or limits aircraft operations or affects aircraft safety.

Under section 9304(a)(2)(B), the Act applies to restrictions on Stage 3 aircraft "that first become effective after October 1, 1990." In considering the applicability of requirements set forth in section 9304 (b) and (d) for restrictions on Stage 3 aircraft operations, as a matter of policy, the FAA will interpret the phrase "first become effective" in section 9304(a)(2)(B) to refer to the date that a regulatory document itself is effective and not to individual compliance dates within the regulatory document.

Comments: Several types of comments were received with respect to the applicability and limitations of the rule. As required by the Act, the rule covers "noise" and "access" restrictions on the operation of Stage 2 and Stage 3 aircraft. Comments on the definition of "noise" and "access," and responses to questions pertaining to the definition posed in Notice No. 91-8, are discussed in detail above under the general issue of "Applicability of the Rule." As stated in that discussion, there was no consensus of opinion among commenters. Responses from airport operators, environmental groups, and a few private citizens argue that the proposed definitions are too broad, especially with respect to access restrictions. Comments from aircraft operators and allied groups, individual businesses that rely on air cargo shipments, and ALPA either affirm the proposed definitions or advocate more inclusive definitions.

Response: No compelling argument or evidence was presented by commenters that the intent of the Act was to include or exclude classes of "noise" and "access" restrictions other than those covered in the definitions in the proposed rule. The proposed definition was constructed by reciting the list of covered restrictions on Stage 3 aircraft operations specified in section 9304 of the Act, adding similar restrictions on Stage 2 aircraft operations, and explicitly including airport use charges that control airport noise. Upon reviewing the comments on the definition of "noise" and "access" restrictions, it is apparent that it would be beneficial to specify some potential sources of restrictions as a means of clarifying the definition. The definition contained in the rule therefore indicates that restrictions include, but are not limited to, provisions of ordinances and leases that limit or control noise and access.

Comments: The proposed rule is applicable to airport restrictions that become effective after October 1, 1990, and affect Stage 3 aircraft operations. Some commenters, including the Massachusetts Port Authority and the Raleigh-Durham Airport Authority, argue that a restriction on Stage 3 aircraft operations that was formally adopted prior to October 1, 1990, is not subject to the rule even if the implementation date of the restriction occurs after October 1, 1990. Comments from ATA urge that the rule be clarified to prevent misinterpretation with respect to the effective date of the restriction.

Response: Consistent with the Act, the proposed rule would apply only to restrictions on Stage 3 aircraft operations that become effective after October 1, 1990. However, a restriction may be effective before the date of its implementation. A restriction is effective when it is formally adopted or when final action on it is completed. The proposed rule appears clear with respect to this issue and the language of the rule therefore remains as initially proposed.

Secretary Skinner recently announced this policy in relation to the regulations adopted by the Raleigh-Durham Airport Authority. See, letter of Samuel Skinner to the Honorable James L. Oberstar dated April 25, 1991, in docket.

Section 161.5 Definitions

This section defines terms as used throughout the rule. Aside from minor editorial changes, there were two changes in the proposed rule text of some significance.

The definition of "agreement" was revised to define the class of new entrants whose signature is required to implement a restriction to include only those who, in addition to submitting a plan to commence operations within 180 days of the effective date of the proposed restriction, respond to the notice of proposed restriction. The rule uses the phrase "all new entrants that have submitted the information required under § 161.105(a)" to indicate that a new entrant may not prevent an agreement by failing to respond to the notice. This definition is also set forth in §§ 161.101(b) and 161.107. New entrants who fail to respond to the notice waive the right to claim lack of consent to the agreed-to restriction for two years. Such persons are also ineligible to use lack of signature as ground to apply for sanctions under subpart F for two years. For public policy reasons, all other new entrants that are not qualified to object because they plan to commence service after 180 days or at some indefinite time in the future are also deemed ineligible to apply for sanctions under subpart F for two years based on lack of signature.

As proposed, the "airport noise study area" would be defined by the DNL 65 dB contour, and the day-night average sound level (DNL) would be specified as the measure for noise exposure of individuals. In response to many comments requesting greater flexibility, this definition has been revised. (Comments are fully discussed above in the general issue section "Noise Study Area and Metrics.") The revised definition of "airport noise study area" highlights applicant determination of the study area within the limitations of part 150. While reference to the DNL 65 dB was deleted, it is a contour that is included in the noise contours required under part 150. This revision makes more explicit the latitude allowed airports in selecting noise contours for study, as long as certain required contours are addressed.

Section 161.7 Limitations

This section delineates what restrictions are subject to this part by identifying those that are statutorily excepted or otherwise not covered by this part. Paragraph (a) has undergone minor textual revision to better identify those airport-imposed noise abatement operational procedures that are not

subject to this part. There are no other changes to the proposed text of this section.

Notice No. 91-8 invited comments on what procedure, if any, should the FAA adopt to resolve any dispute over whether a restriction is subject to this regulation. While providing a statement of applicability, a definition of noise and access restrictions, and a statement of limitations, the proposed rule contains no method for resolving applicability disputes apart from the process of investigating compliance and imposing sanctions (subpart F), as noted by a few commenters. If there is doubt regarding coverage under the rule of a proposed restriction, informal inquiry can be made to the FAA for an opinion on applicability of the rule to a potential restriction. No formal process for resolving applicability questions independent of subpart F is included in the final rule, partly because the FAA may not be able to provide a binding opinion or resolution may be impossible without obtaining input from affected third parties.

Section 161.9 Designation of Noise Measurement Systems

The proposed rule text has been revised to emphasize applicants' latitude with regard to noise measurement within the limitations of part 150, which generally encompasses the proposed text requirements.

Comments: Many comments were received on methods of noise measurement. These comments are discussed in detail above under the general issue "Noise Study Area and Metrics." While there was no consensus among commenters on this topic, expressions by airport operators, environmental groups, individual citizens, and the EPA of the need and desire for flexibility with respect to both the boundaries of the airport noise study area and the noise measurement system were more prevalent than arguments by aircraft operators and allied groups to retain the proposed definition and specification of noise metric.

Response: The DNL is an appropriate and sufficient measure of noise exposure. However, the use of supplementary metrics to provide additional noise analysis when desired by airport operators is not disallowed in 14 CFR part 150, appendix A, which is referenced in the proposed rule.

It is advantageous to specify noise measurement standards for airport noise in only one part of the Federal Aviation Regulations—14 CFR part 150. If changes in noise metric or measurement systems are adopted in the future, the FAA standard contained in 14 CFR part 150 would automatically apply to part 161.

Further, the airport noise study area is intended for organizing information regarding noise exposure with and without proposed restrictions. Anticipated change in noise exposure as a result of proposed restrictions on aircraft operations is only one factor to be considered in determining the justification of proposed restrictions. Other factors, such as relative effectiveness, cost, or burden of the restrictions, must also be considered. Thus, there is no need to limit the boundaries of the airport study area so long as the area encompasses the noise contours required to be developed for noise exposure maps as specified in 14 CFR part 150.

For these reasons, the applicant may select the airport noise study area. However, that area must include the lowest noise contour required for noise exposure maps as specified in 14 CFR part 150. In addition, the rule now requires measurement of sound levels and noise exposure of individuals as established in Appendix A of 14 CFR part 150. There is no further specification of noise study area size, metrics, or noise measurement systems in this subpart, and the use of supplementary metrics is permitted.

Comments: Several commenters express the view that the proposed rule will increase opposition to airport expansion. Some of these commenters add that the rule should specifically state that the FAA is not mandating that airports expand their physical facilities. One commenter recommends that a separate section of the rule be devoted to establishing restrictions at new airports.

Response: These comments focus on the language of the Act, rather than on the proposed rule. The Act does not mandate that airports expand their existing physical facilities. Moreover, the FAA does not believe that this point is sufficiently ambiguous in the Act to require clarification in the rule. Neither does the Act provide separate provisions for new airports, as opposed to existing airports; therefore, the rule does not go beyond the statutory provisions in this regard.

Comments: One commenter wants more weight and protection given in the proposed rule to existing conditions presently in effect at airports so as not to undo previous noise abatement efforts.

Response: The Act already provides for "grandfathering" restrictions in effect at the time of the Act's passage and for other specifically described exemptions, reflected in § 161.7 of the rule. The Act does not give the FAA the discretion to add to these exceptions.

Subpart B pertains to noise or access restrictions on operations of Stage 3 aircraft that are implemented pursuant to an agreement between the airport operator and all aircraft operators at the airport affected by the proposed restriction.

Under the provisions of the rule, once an airport operator has obtained an agreement (in writing) of all aircraft operators affected by the proposed restriction that are serving the airport or will be within 180 days, including new entrants that respond to the notice, the operator may implement the restriction. Such restrictions have the same force and effect as Federally approved restrictions except that, for policy reasons, subpart B recognizes a limited exception for new entrants. To afford some protection to the agreement, the rule provides that new entrants not objecting to the proposed restriction within the 45-day comment period have waived their right to any objection based on lack of signature and are ineligible to seek sanctions under subpart F for two years.

The rule now excludes agreements regarding Stage 2 aircraft operations from this subpart. Similarly, the term "voluntary agreement" has no meaning under the Act and has been deleted.

The critical distinction under subpart B as adopted is between restrictions implemented pursuant to agreement of all aircraft operators (under this subpart) and other, less inclusive agreements that have no effect on new entrants. The rule clarifies that airport operators may continue to enter into agreements with one or more aircraft operators to restrict operations of Stage 2 and Stage 3 aircraft, provided the restrictions in those agreements are not enforced outside of the agreement's parameters. The final regulation excludes these agreements from coverage under subpart B. For these agreements, remedies are available under the Act and the final regulation only if an airport operator seeks to make the restriction in such an agreement mandatory outside of the agreement's terms. In such a case, the final rule provides that an aircraft operator may seek sanctions under subpart F for an airport operator's failure to comply with subparts C and/or D.

Section 161.101 Scope

This section sets forth the applicability of subpart B. As proposed, this section would require agreement by all affected aircraft operators at the airport and affected new entrants that

have applied to serve at the airport within 180 days of the agreement's effective date.

In the NPRM, the FAA requested comments on whether the proposed requirement of agreement by aircraft operators serving the airport or intending to do so within 180 days is reasonable in light of the statutory reference to "all aircraft operators." Also posed in the NPRM were the following questions: What recourse, if any, should be available to an aircraft operator not covered by the 180-day new entrant limitation? 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 be sufficient to protect the interests of new entrants against exclusionary agreements? Is it appropriate to allow agreements to cover Stage 2 operations as well as Stage 3 operations? 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?

Comments: Some commenters, including AOCI and AAAE, advise that new entrants will have already contacted the airport within sufficient time to be considered for participation in the agreement process. Conversely, The Massachusetts towns of Bedford, Concord, Lexington, and Lincoln suggest that only existing aircraft operators be required to agree. The UPS contends that an agreement would be good for those who are "in" as opposed to those who are "out." The Maryland Aviation Administration suggests an alternative method of compliance with notice requirements, where potential new entrants and industry organizations would preregister with the airport for receipt of restriction proposals.

A number of comments address the definition of "all aircraft operators." Comments from communities and airport operator associations generally endorse a narrow definition of agreement participants, as do air freight carriers to some extent. Commenters fear empowering those aircraft operators not immediately affected by the proposed restrictions with the ability to frustrate an expeditious agreement. Air freight carriers' comments argue for a limited expansion of the proposed definition of "affected aircraft operators," stating that FAA exceeded the Act in its inclusion—and narrow definition—of "new entrants." They further note that the new entrant category should not be limited to those expressing a desire to serve an airport within a certain number of days.

Response: Subpart B implements the section of the Act which provides that "no airport noise or access restriction on the operation of a Stage 3 aircraft * * * shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary * * *" (section 9304(b)(5)). The FAA concludes that the purpose of the Act was not to exempt agreements from Federal oversight, but rather to establish a procedure by which an airport operator may establish a restriction on operations of Stage 3 aircraft pursuant to an agreement with all aircraft operators at the airport that is, to the extent practicable, as effective as a Federally approved retriction. The FAA interprets the Act to authorize agreements that, once implemented, have largely the same force and effect as a Federally approved restriction. As adopted, subpart B provides an alternative procedure for the airport operator to establish a Stage 3 restriction having such force and effect. The term "voluntary agreement" is no longer meaningful under this interpretation, and is deleted from the final rule. The critical distinction under subpart B is between restrictions implemented pursuant to agreement of all affected aircraft operators (under subpart B) and other, less sweeping agreements that do not affect new entrants.

As proposed and adopted, subpart B allows an airport operator that obtains the signature of all aircraft operators affected by the restriction and new entrants planning to serve the airport in the near future to implement a restriction after providing proper notice and a minimum 45-day comment period. Compliance with the detailed analysis and other Federal approval requirements under subpart D is not required.

Implementation of restrictions on Stage 3 aircraft operations by agreement provides a simpler, streamlined process for the airport and airlines to reduce aircraft-generated noise on surrounding communities voluntarily. By limiting the process requirements, reducing attendant costs, and minimizing the involvement of the Federal government, the FAA views subpart B as advantageous to all concerned.

In addition, the final rule provides that a restriction cannot be implemented by agreement under this part unless all affected carriers currently operating at the airport, and all affected new entrants that have applied to serve at the airport within 180 days of the effective date of the proposed restriction and have responded to the notice, agree to the restriction. The requirement for a signed, written agreement is retained to clarify the scope of the subpart, although it is also set forth in § 161.107(a). The restriction cannot be applied to any entity, including those that have signed the agreement, unless all affected parties sign the agreement, with the exception of new entrants (discussed in § 161.105 below).

Minimal Federal involvement is appropriate with respect to restrictions implemented by agreement. Attempts by airport operators to force the terms of an agreement on parties that have not evidenced their consent by signature (other than on new entrants failing to object after notice, as explained below) transforms the agreement into a mandatory restriction, and therefore subject to the requirements of subpart D of this part.

Few comments were received in response to the series of questions as to agreements for Stage 2 restrictions and the need for analysis and notice. However, because the Act specifically provides that "no airport noise or access restriction on the operation of a Stage 3 aircraft * * * shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary * * *" (section 9304(b)(5)), the FAA has excluded Stage 2 restrictions from the coverage of subpart B. Given the absence of express authorization in the Act to establish a parallel procedure for agreements regarding Stage 2 aircraft restrictions, the FAA concludes that the rule will not encompass Stage 2 aircraft restrictions in such agreements.

As stated in § 161.101(d), however, this subpart does not limit the existing right of an airport operator to enter into an agreement with one or more Stage 2 or Stage 3 aircraft operators regarding their operations as long as the restriction is not enforced against aircraft operators not party to the agreement. This is consistent with the Act, which provides that rights under existing law are retained except to the extent required by the application of the provisions of section 9304(h). Because the Act does not require the elimination,

invalidation, or preemption of existing law regarding agreed-to restrictions, the FAA concludes that the Act intended to allow airport operators and aircraft operators to continue to enter into agreements restricting the operations of Stage 2 and Stage 3 aircraft.

As the Act was not intended to disturb or interfere with these less sweeping agreements, subpart B provides that such an agreement is not covered by this subpart. However, an aircraft operator may apply for sanctions pursuant to subpart F for restrictions the airport operator seeks to impose that exceed the agreed-to limitations. Furthermore, an airport operator cannot establish and apply a Stage 2 restriction that is not included in an agreement with the affected aircraft operator(s) unless the requirements of subpart C of this part have been satisfied.

One commenter requests that aircraft weighing less than 75,000 pounds be exempted from restrictions implemented by agreement. Applicability of the rule to these aircraft is discusssd above under the general issue "Treatment of Aircraft Weighing Less Than 75,000 Pounds." No operator of any aircraft, including those less than 75,000 pounds, may be compelled to sign an agreement.

Section 161.103 Notice of the Proposed Restriction

As proposed, this section established published and direct notice requirements for restrictions contained in agreements. It also set forth the information that must be contained in each notice, as well as a 45-day period for new entrants to apply for inclusion in the agreement.

The FAA requested comments on the following specific questions regarding notice: Are the notice requirements proposed for agreements reasonable? Although the Act does not expressly require the form of notice proposed, should this rulemaking require it? If published and direct notification should be mandatory, can the requirements be made less burdensome? Would publication alone be sufficient notice? Is 45 days reasonable for reply to published notices? Is it reasonable to require that the FAA be notified of the implementation and termination of agreements?

Comments: Many commenters believe that the notice requirements proposed throughout the rule are excessive. Commenters such as the City of Long Beach, AOCI and AAAE, and Massachusetts towns of Bedford, Concord, Lexington, and Lincoln find that direct notice is repetitive, because parties to the agreement will already know about it. Conversely, the Air Freight Association requests that additional direct notice be provided to general corporate headquarters to ensure that the chief executives are notified. Some commenters suggest that publication of notice in local papers of general circulation and notice to the FAA is sufficient. A few commenters recommend that the FAA publish notice of a proposed restriction in the **Federal Register** instead of the requirement to notify certain Federal, state, and local government agencies. Other commenters, such as CLASS, believe that it will be difficult to identify those known to be interested in serving the airport that are expected to be affected, and that notice in national newspapers and trade publications will be costly and repetitive. Other commenters, including Wayne County, Michigan;: the Airports Commission of the City and County of San Francisco; and the towns of Bedford, Concord, Lexington, and Lincoln, Massachusetts, suggest that any published notice be simply a brief notice identifying a contact for further information.

Other commenters, including the Air Freight Association and ALPA, are satisfied with the requirements. The Port of Seattle and SAFE request that FAA require notice to local citizens and citizens' groups. Airborne Express requests that the FAA publish notice in the **Federal Register** in addition to the notice requirements in the NPRM.

Response: FAA established subpart B in response to the Act's reference to restrictions on Stage 3 aircraft operators agreed to by the airport operator and all aircraft operators. FAA has spent considerable time evaluating subpart B in light of comments received, and is of the opinion that notice requirements, particularly for new entrants, remain extremely important because this subpart prohibits, for two years, the implementation of sanctions for restrictions that are enforced against a new entrant that failed to object to the proposed restriction. The Act requires that adequate public notice and comment opportunity be provided for restrictions covered by this part. However, the FAA has substantially modified the notice requirements of subpart B in an effort to reduce the burden of compliance for airport operators.

Requirements for notice publication in a newspaper with national circulation and in aviation trade publications have been deleted from the rule. The rule includes a new requirement that FAA provide national notice by publishing a brief announcement of the proposed agreement on restrictions in the **Federal Register**. Although this process should ensure wide notice to all interested parties, airport operators continue to be required to publish a notice in an areawide newspaper(s) of general circulation. Further, a requirement has been added to post a notice of the restriction in a prominent location at the airport.

The NPRM proposed notice to aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that were expected to be affected by the restriction. The final rule retains the requirement to notify potential new entrants that are known to be interested in serving the airport. The FAA finds that this requirement is not vague and should not be difficult for airports to implement. In addition, rather than requiring notice to all operators serving the airport, the rule now specifies those parties that must be notified. They include aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, and aircraft operators known to be routinely providing nonscheduled service. The rule also requires that the airport operator contact other parties that may be interested in the agreement, such as community and business groups, agencies with land-use control jurisdiction in the vicinity of the airport, and fixed-base operators and airport tenants. The requirement to contact all government agencies with facilities in the vicinity of the airport is deleted.

Section 161.105 Requirements for New Entrants

This is a new section in the final rule. The proposed rule assumed that agreements entered into under the Act would affect new entrants to some unspecified degree and included provisions to protect potential new entrants. The preamble posed questions about what recourse new entrants should have with respect to an agreement authorized under subpart B. Upon consideration of the comments received, the FAA has substantially clarified the rule's treatment of new entrants. The FAA has determined that, while protection should be afforded new entrants planning to start service in 180 days, protections provided in this subpart should not effectively prevent an agreed-to restriction from being implemented once the notice and comment period has been provided.

In the final rule new entrants, defined as aircraft operators that plan to start service within 180 days of the proposed implementation date of the agreement,

must contact the airport and indicate whether they agree or object to the restriction. If the new entrant responds and objects, the airport operator cannot implement a restriction based on an agreement under subpart B. However, after providing the requisite notice and opportunity for a new entrant to comment, and receiving no objection, an airport operator may proceed to implement a restriction agreed to by all affected aircraft operators. Aircraft operators not serving the airport and without plans to serve the airport in the near future, or that fail to object to the proposed restriction, will not be able to prevent the establishment of a restriction. Agreement of new entrants that do not respond to the notice is not required, and their failure to respond renders their signatures unnecessary. Based upon their lack of signature, such new entrants are deemed to have waived, for two years following implementation of the agreement, their right to claim that they did not consent to the agreement. Such entities are also ineligible for two years to apply for sanctions under subpart F on the ground that they have not signed the agreement.

The two-year period strikes the proper balance between several competing interests. On the one hand, there is the interest of a new entrant in immediately overturning the restriction. Particularly the new entrant that, in good faith, did not object to a proposed restriction either because it could not foresee how circumstances would change, or because the new entrant did not exist at the time of the proposed restriction. On the other hand, there are the interests of the airport operator, aircraft operators at the airport, and the community in stability and an opportunity to enjoy the benefits of the agreed-to restriction.

Section 161.107 Implementation of the Restriction

Proposed as § 161.105 in the NPRM, this section required agreement by all affected aircraft operators for implementation of a restriction. It also stipulated notice to the FAA of the agreement, and submission to the FAA of evidence of notice, as well as a copy of the written, signed agreement.

The FAA requested comments on whether the proposed requirement for a written and signed agreement was reasonable.

Comments: Dade County Aviation Department comments that agreements of a minor nature need not be in writing. The Port of Seattle asserts that written and signed agreements could delay the agreement process. Other commenters, including Mr. Thomas Murray, ALPA, the Air Freight Association, and the Maryland Aviation Administration, maintain that written and signed agreements are essential to avoid misunderstandings.

Response. Section 161.107 retains the requirement for a written and signed agreement. Also retained is the proposed requirement for notice to FAA that the restriction has been implemented, including a copy of the signed agreement and evidence of compliance with the notice and comment requirements under § 161.103. The requirement to include in the notice "evidence of the agreement" has been deleted as unnecessary. The requirement for written and signed agreements in this section (also set forth now in § 161.101(b)) is needed to ensure that the terms of the agreement will be clear, not only to the parties, but to the FAA as well. Written, signed agreements will facilitate consideration of requests for sanctions for alleged noncompliance with the requirements of subpart D. Written, signed agreements can also be useful to the FAA should a reevaluation be warranted at some future date.

Section 161.109 Notice of Termination of a Restriction Pursuant to an Agreement

Formerly § 161.107, this section was slightly modified to focus on restrictions pursuant to an agreement. It requires that the airport operator must inform the FAA when a restriction is terminated. Termination of a restriction may be a result of the terms of expiration contained in the restriction or by mutual consent. Any continuation of a restriction after it has been terminated by the terms of the agreement would require compliance with subpart D, unless it is implemented by a new agreement.

Section 161.111 Availability of Data and Comments on a Restriction Implemented Pursuant to an Agreement

This is a new section that was not contained in the proposed rule. It adds a new requirement that the airport operator retain all relevant supporting data and comments received regarding a restriction implemented by agreement for as long as the restriction is in effect. It also mandates that the airport operator make this information available for inspection upon request by the FAA or an aircraft operator whose request for reevaluation was deemed justified by the FAA.

This additional section is responsive to commenters' concerns that necessary data and information from the initiation of the agreed-to restriction will later be unavailable when reevaluation of an agreed-to Stage 3 aircraft operation restriction is pending.

Section 161.113 Effect of Agreements; Limitation on Reevaluation Restrictions

A new section has been added to the rule to clarify that a restriction implemented pusuant to subpart B has the same force and effect as a restriction implemented in accordance with subpart D, except as otherwise specifically provided in subpart B. This section also clarifies the recourse available to dissatisfied aircraft operators that have agreed to a restriction under this subpart. The FAA generally will not accept requests for reevaluation under subpart E of restrictions agreed to under subpart B for a period of two years following implementation, but exceptions may be made on a case-by-case basis. This waiting period is based on the provisions of the Act (section 9304(f)).

Subpart C pertains to notice and review of proposed restrictions on Stage 2 aircraft operations. 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 benfits of the proposed restriction.

Second, the operator must provide notice of 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 on aircraft; 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.

Further, the Act maintains the discretion and pre-existing authority of airport operators (and limitations thereon) to restrict this 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 also directs the Secretary to determine the applicability of these requirements to operators of Stage 2 aircraft weighing less than 75,000 pounds.

The statutory requirement for review of restrictions on Stage 2 aircraft

operations does not apply to 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.

In implementing the statutory requirement for analysis, notice, and comment, FAA 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.

Section 161.201 Scope

The proposed rule applied the requirements of this subpart to noise and access restrictions on the operation of Stage 2 aircraft proposed after October 1, 1990, and amendments to existing restrictions on Stage 2 aircraft if the amendment became effective after November 5, 1990. It did not apply to restrictions on Stage 2 aircraft operations specifically exempted in § 161.7.

The rule has been revised to apply the requirements of the subpart to amendments if they "are proposed after October 1, 1990," rather than if they "become effective after November 5, 1990." The Act clearly states that required notice and analysis of restrictions on Stage 2 aircraft operations apply only to those proposed after October 1, 1990. Thus, this would also apply to amendments.

Section 161.203 Notice of Proposed Restrictions

The proposed rule requirements for notice for restrictions on Stage 2 aircraft operations included publication in a newspaper with national circulation; in a newspaper of general circulation; and in aviation trade publications. The airport operator would have been required to notify, in writing, aircraft operators serving the airport; those interested in serving the airport; the FAA; and each Federal, state and local agency with facilities or land-use control jurisdiction within the airport noise study area. As proposed, the notice was required to include a description of the restriction, discussion of the need for that restriction, identification of aircraft expected to be affected, and an analysis of the proposed restriction or announcement of its availability.

Comments: Comments from air carriers typically support the notice requirements or recommend stricter requirements, whereas airports typically assert that the requirements are too costly and burdensome.

In general, airports and noise groups are of the opinion that the proposed notice requirements far exceed the requirements of the Act. They note that the Act requires only publication and they do not support direct notice, arguing that it would be too costly and difficult to determine whom to notify. The NAWG, for example, supports publication of notice only in an areawide newspaper of general circulation. They state that the requirement to directly notify aircraft operators known to be interested in serving the airport is too vague to enforce. A number of airports comment that they should be allowed to follow their normal local notice procedures, and that the FAA should take more responsibility for national notice. Organizations such as the Air Freight Association, Airborne Express, Florida West Airlines, McDonnell Douglas, and AIA recommend that the FAA provide notice of Stage 2 restrictions in the **Federal Register**, as is proposed for Stage 3 restrictions.

Air carriers either support the proposed notice requirements or maintain that they should be more stringent. Some would require that notice be given directly to the president of each aircraft operator serving the airport. The ALPA comments that the notice requirements in the proposed rule are reasonable and necessary. The SAFE argues publication alone is not adequate and that direct notice is necessary.

Airborne Express maintains that the rule does not affirmatively mandate that airports provide a minimum 45-day comment period, and recommends that a minimum 60-day comment period be mandated. On the other hand, Westchester County, New York, claims that the time period for notice and comment is too lengthy. Northwest Airlines is concerned that there are no assurances that airports will consider views received during the notice and comment period.

Response: As a result of the comments, the notice requirement for Stage 2 restrictions in the rule have been modified. A number of changes have been made to the rule to reduce unnecessary burdens on those proposing restrictions, while providing the same level of notice proposed in the NPRM. The FAA agrees with a number of commenters that direct notice is essential, but finds that some of the costly publication requirements can be reduced without adversely affecting awareness of the proposed restrictions. The FAA does not agree with commenters that would allow airports to apply local notice procedures, because these varied procedures would not ensure provision of complete and consistent information to affected or interested parties.

In the rule, requirements for publication in a newspaper with national circulation and in aviation trade publications have been deleted. The FAA will provide national notice by publishing a brief announcement of proposed restrictions on Stage 2 aircraft operations in the **Federal Register**. This should ensure wide notification.

Airport operators are still required to publish a notice in an areawide newspaper of general circulation, but circulation of the newspaper or newspapers must cover all land-use planning jurisdictions included in the airport noise study area. In addition, airports will be required to post a notice of proposed restrictions in the airport in a prominent location accessible to airport users and the public. This requirement will provide an additional local source of information and will be of minimal cost to the airport. The rule also includes a requirement to directly notify community groups and business organizations in the affected area known to be interested in noise restrictions, as well as fixed-base operators and other airport tenants whose operations would normally be affected by the restriction.

The requirement to directly notify Federal, state, and local agencies has been limited to those with land-use control jurisdiction within the airport noise study area, deleting the requirement to notify all agencies with facilities within that area. This revision further limits the burden of notification while still ensuring that agencies with jurisdiction in the airport noise study area are notified.

The requirement to notify carriers has been changed. The NPRM proposed notification of aircraft operators serving the airport and aircraft operators known to be interested in serving the airport that were expected to be affected by the restrictions. The rule retains the requirement to notify potential new entrants. The FAA does not believe that this requirement is vague, and does not expect it to present any implementation difficulties to airports. In addition, rather than requiring notification of all operators serving the airport, the rule now specifies those parties that should be notified. They include aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, and aircraft operators known to be routinely providing nonscheduled

service at the airport that may be affected by the proposed restriction.

The FAA has retained the requirement of a minimum 45-day comment period as this is an affirmative obligation for airports to receive comments. The requirement is only a minimum, however, and airports would be free to allow for receipt of comments for 60 days or longer. The final rule does not impose a specific duty on airports to consider views received during the comment period. The Act only requires that airports provide for notice and comment, and does not mandate an evaluation of, or response to, the comments. However, airports will consider the views of commenters, and the FAA will consider these commenters' opinions in determining whether to consider action against a restriction that is alleged to be unreasonable, an undue burden, or discriminatory.

There are no changes to the information required to be included in the notice. These information requirements are minimal and necessary so that interested parties are able to fully understand the proposed restriction.

Section 161.205 Required Analysis of Proposed Restriction and Alternatives

With respect to implementing the statutory requirement for analysis of the proposed restriction, the proposed rule reiterated the language in the Act requiring analysis of anticipated or actual costs and benefits, description of alternative restrictions, and a description and cost/benefit comparison of the alternative nonaircraft measures considered. It further proposed to require that the analyses be conducted in accordance with generally accepted economic analysis methods and reflect current airline industry practice. As proposed, noise measurement systems and the identification of the airport noise study area would conform to the requirements of 14 CFR part 150. Notice 91-8 further proposed that the airport operator specify the 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 referenced the information for analysis of restrictions on Stage 3 operations as providing useful elements of an adequate analysis for a proposed restriction on Stage 2 aircraft operations. 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 effect. The FAA sought comment on specifying in the rule detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 aircraft operations, and the desirability of suggesting analysis standards. Alternatively, the NPRM sought comment on whether optional detailed analysis requirements should be described in an advisory circular. The FAA also queried whether, beyond the requirements of the statute, any specific analysis should be required or encouraged in the final rule?

Because the types of restrictions may vary considerably, and it may be difficult to adequately apply all the analysis requirements to various specific situations, FAA also sought comments on whether the analysis required for restrictions on Stage 2 aircraft operations should vary with either type of airport or type of restriction and, if so, what should be the basis for differentiating analysis requirements.

Finally, the FAA invited the public to specifically comment on whether the airport proposing a restriction on Stage 2 aircraft operations should 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.

Comments: Substantial comment was received in response to questions on whether detailed analysis requirements for restrictions on Stage 2 aircraft operations, similar to those required for restrictions on Stage 3 operations, should be specified in the rule. Generally, air carriers and aircraft manufacturers support detailed analytical requirements, while airports and noise groups argue that stringent analytical requirements will be so costly that airports will be unable to undertake restrictions.

The ATA states that elements of the supporting analysis for a restriction on Stage 2 aircraft operations should not be left to the discretion of the individual proponent of a restriction, but rather the detailed requirements should be spelled out precisely.

In addition to favoring application of the analytical components for Stage 3 restrictions to Stage 2 analysis, ATA supports additional requirements. Specifically, ATA argues that the regulation must also require airport operators to develop a detailed economic analysis of "the impact of the airport's proposed phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry, the impact of competition within the airlines and air cargo industries, the impact on nonhub and small community air service and the impact on new entry."

Also supporting the application of Stage 3 analytical requirements to Stage 2 restrictions, the Air Freight Association and UPS point out that, while no specific FAA approval is necessary for proposed Stage 2 restrictions, FAA is still obligated to measure proposed restrictions against requirements of pre-existing law, and they claim such data is necessary to make this assessment.

Airborne Express urges mandatory detailed analysis, stating if an airport operator has a documented airport noise problem related specifically to identifiable aircraft operations, it should have no problem submitting detailed Stage 3-type analysis.

Federal Express believes it is essential to define elements of cost-benefit analysis in the regulation, arguing that a detailed and thorough economic-based financial procedure should be mandatory for proposed Stage 2 and Stage 3 restrictions.

The ALPA believes that, at a minimum, the analytical requirements in subpart C are both reasonable and necessary. The Wisconsin Department of Transportation comments that the rule dictates a very intensive process that will probably hinder the proposal of a large number of restrictions that would defeat the intent of developing a national noise policy.

Representing the opposing view were commenters including NAWG; the City of Long Beach; the Suburban O'Hare Commission; the towns of Bedford, Concord, Lexington and Lincoln, Massachusetts (in a joint submission); Airport Impact Relief; and AOCI and AAAE (in a joint comment). They argue that nothing in the rule should require analysis beyond that required in the statute. They further assert that there is no role for FAA in this process. The NAWG believes that the proposed rule expressly violates Congressional intent that airport operators have unrestricted authority to control Stage 2 aircraft. They argue that it is unwarranted for the regulator to add additional requirements when Congress specifies in detail the analysis needed. The NAWG claims that in suggesting that specific information components will constitute useful elements of an adequate analysis, the FAA invites a challenge to an airport

operator's analyses that do not include Stage 3 analytical components.

The Port Authority of New York and New Jersey; the Airports Commission of the City and County of San Francisco; Wayne County, Michigan; and the joint comment for Adams County (Colorado) Coordinating Committee, Raleigh-Durham Airport Authority, the city of Redlands, California, and the city of Tempe, Arizona, not only object to applying Stage 3 analysis to Stage 2, but also oppose FAA's proposal to specify accepted economic methodologies and noise measurement system specified in 14 CFR part 150.

Several communities, such as the towns of San Jose and West Palm Beach, cite costs associated with detailed analytical requirements as a de facto barrier to local operators seeking to establish access restrictions on Stage 2 aircraft. With respect to the question of whether detailed analysis requirements should be described in an FAA Advisory Circular, comments specify that the requirements should be included in the final rule, although the Air Freight Association notes that publication in an Advisory Circular is better than no requirement being issued.

The NPRM also sought comment on whether any specific analysis beyond that required in the statute should be required or encouraged in the final rule.

The ATA advises requiring that analysis include an identification of any communities likely to be adversely impacted due to a reduction in the aircraft fleet (i.e., those cities likely to experience an elimination or decline in service). It suggests that those affected should be invited to comment on the proposed restriction.

The NBAA holds that if this subpart is applicable to restrictions on aircraft weighing less than 75,000 pounds, the airport operator's analysis should provide specific detail of the cost and benefits of the restriction with respect to light Stage 2 aircraft.

The NATA recommends that the FAA require restriction proponents to analyze the impact of a restriction on an affected fixed-base operator. The Chamber of Commerce urges FAA to include the impacts on business, competition and interstate commerce in its economic analysis.

Northwest Airlines suggests that analysis of a proposed restriction include an assessment of the proposal's impact on small communities that are often served by Stage 2 aircraft. Northwest recommends that restrictions on Stage 2 aircraft operations be submitted to FAA for prior approval. The air carrier further recommends that the FAA review within 14 days an airport's proposed restriction for compliance with section 9304(c) of the Act.

Florida West Airlines believes the FAA should review proposed restrictions, not for approval, but to advise airport operators when a proposed restriction may jeopardize Federal funding.

Gulfstream supports requiring the restriction proponent to address and analyze comments and concerns of interested parties, and either revise restrictions according to valid comments or refute comments.

Several commenters, including the NAWG, the Massachusetts Port Authority, and the Port Authority of New York and New Jersey, seek either deletion or clarification through further delineation of terms such as "currently accepted economic methodology" and "reflect current airline industry practice." The Metropolitan Washington Council of Governments recommends eliminating arcane, speculative cost categories and enhancing the benefits side of the equation. The Suburban O'Hare Commission suggests that the FAA work with communities and experts to develop a mutually acceptable methodology for determining the benefits of noise reduction to the communities. Dade County, Florida, Aviation Department is concerned with the availability of much of the required data, while Federal Express Corporation suggests that the requisite proficiency of those conducting and performing such analyses should be set forth.

The FAA, as noted earlier, sought comments on whether the analysis required for proposed restrictions on Stage 2 aircraft operations should vary with either type of airport or type of restriction and, if so, what should be the basis for differentiating analysis requirements?

Comments submitted by Federal Express state that analysis of proposed restrictions on Stage 2 operations should not vary by type of airport or type of restriction, because the type of restriction or airport have a different meaning for each carrier, noting that one type of restriction may be crucial at one airport while of very little importance to another carrier. This commenter adds that standardization and equal treatment must be maintained.

The Air Freight Association, McDonnell Douglas, and NBAA submit that uniform rules will be easier to understand and administer and should be applied in all cases.

The ATA points out that the level of sophistication and intricacy of analysis will clearly vary as to type of airport and type of restriction, but suggests that there is no point in establishing a different fundamental standard.

Florida West Airlines, however, suggests that, for general aviation airports, the data should be tailored for general aviation uses and economic impact. Maine/New Hampshire V.O.I.C.E. favors varying analysis by type of airport or type of restriction, suggesting also that the location of the airport and ambient noise characteristics should be considered. The City of Torrance wants to differentiate analytical requirements for general aviation airports (as opposed to commercial).

Finally, the FAA invited comment on whether restriction proponents should address questions of whether 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.

The AOCI and AAAE oppose requiring such analyses, stating there is nothing in the statute suggesting this is either necessary or appropriate. The ATA cautions FAA that application of an overly routine analysis or "checklist" approach to undue burden will fail to identify all possible permutations. The NACA wants airports to explain explicitly why the restriction is not unreasonable, arbitrary or discriminatory, etc., while the Boston Transportation Department believes that the burden of proof should rest with the airlines. The CLASS oppose this extra burden of demonstrating the validity of proposed Stage 2 restrictions.

Response: FAA carefully considered all the comments in an attempt to structure a rule that would effectively balance the need for careful evaluation of a restriction against the burden of costs and time of producing required analysis. Subsection 9304(a) of the Act authorizes the FAA to establish, by regulation, a national program for reviewing proposed airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Therefore, it is appropriate for FAA to determine the analytical components necessary for an adequate review.

As the Act is specific in its analytical requirements for Stage 2 analysis, FAA has concluded that restatement of the statutory requirements in the rule is appropriate. It is apparent from the Act that Congress intended to differentiate the analytical requirements for review of proposed Stage 2 and Stage 3 restrictions, in that it requires FAA approval of Stage 3 restrictions. Therefore, the final rule maintains a

distinction between Stage 2 and Stage 3 analysis.

It is essential to require standardization in the method of developing Stage 2 restriction analysis. To insure that the public is afforded an adequate opportunity to comment on the proposed restriction, it is imperative to require that noise analyses be conducted in accordance with an accepted methodology, specifically that prescribed in 14 CFR part 150. Enhanced understanding of the restriction will be facilitated if analysis conforms to accepted economic methodology, concepts of which are readily understood in the professional community. The final rule deletes the reference to current air carrier industry practices, which many commenters found confusing and vague. The proposed rule's references to elements of Stage 3 analysis are retained in the final rule: these analysis components are not mandatory, but reference to them will provide useful guidance to airports developing analyses by illustrating information that might be relevant.

A new provision is added to the rule to require that the analysis provide separate detail on costs and benefits of restrictions affecting Stage 2 aircraft weighing less than 75,000 pounds. A comprehensive analysis should, even in the absence of this stipulation, examine the impact of a restriction by aviation user class. The Secretary has determined, in response to the discretion granted in section 9305 of the Act, that airports may impose restrictions on the operations of Stage 2 aircraft weighing less than 75,000 pounds, subject only to the requirements of this subpart. However, given the Act's direction for a study of the impact of such restrictions in determining general applicability of this part, a requirement has been added to this section of the rule that the analysis must provide specific detail on the costs and benefits of a restriction with respect to light Stage 2 aircraft.

Because there was little support for issuance of an FAA Advisory Circular to describe elements of analysis, FAA has decided not to utilize this vehicle at the present time. Similarly, there were few advocates for differentiating analytical requirements according to either type of restriction or type of airport, and little direction (other than general aviation airport versus commercial) on the appropriate basis for differentiating requirements. Therefore, the final rule will provide for no differentiation according to type of restriction or type of airport.

Section 161.209 Requirement for New Notice

The proposed rule would require the airport operator to initiate a new notice if it makes substantial changes to the proposed restriction or the analysis during the 180-day notice period. The term "substantial change" included, but was not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft. The effective date of the restriction was to be at least 180 days after the date of the new notice.

Comments: A number of commenters, including CLASS, believe that the requirement of a new 180-day notice period for a revision is excessive, but they also argue that a substantial change should include a change that is less restrictive, as well as more restrictive. The NAWG believes that the new notice requirement would seriously impede the local rulemaking process and make airport operators unwilling to make changes as a result of comments. They also state that "substantial" was not defined, leaving the process open to continual dispute. The AOCI and AAAE comment that the process would be cumbersome and recommend instead a 30- or 60-day comment period for significant changes. Air carriers, such as Florida West, believe that any change to a proposal should trigger a new comment period.

Response: The rule is revised to define "substantial" change more clearly. A "substantial change" no longer categorically includes revisions that alter the way the impact is apportioned among aircraft operators, because that would have resulted in the majority of changes necessitating new notice. Further, the proposed rule would have automatically lengthened the review period for changes that may have actually reduced the burden or adverse impact on all aircraft operators, if such a reduction changed the apportionment of impact among aircraft operators. A "substantial" change now specifically includes a proposal that would increase the burden on any aviation user class. The FAA's primary concern is to ensure that interested parties are fully aware of, and able to comment on, restrictions that affect them. The FAA did not adopt the recommendation to define "substantial change" to include a proposed revision that reduces burden on aircraft operators; the only amendments within the scope of the Act are those that reduce or limit aircraft operations. Aircraft operators considering changes to a restriction proposal, and are uncertain as to whether the change is "substantial," may consult with the FAA for further guidance.

FAA considered reducing the time required for notice once a substantial change in the restriction or the analysis was made. However, it was difficult to differentiate between those that might require only 60 days and those that are so substantial that the full 180 days would be needed. Thus, the final rule continues the requirement for a new 180-day notice for substantial changes. Frequently, where a change is made immediately after review of the comments, the additional time for implementation of new notice may be as little as 60 days beyond the 180-day notice period.

Section 161.211 Optional Use of 14 CFR Part 150

As proposed, this section would allow the airport operator to use the notice and comment procedures contained in 14 CFR part 150 as an alternative to the corresponding procedures contained in this subpart. The proposed rule text also would allow inclusion of the analysis required in this subpart in the airport operator's part 150 program submission.

Comments: Several different types of comments were received on the proposed optional use of 14 CFR part 150 procedures. Most of the comments favored this option, although two commenters express a dislike for the part 150 process. On the other hand, one commenter recommends that the part 150 process be mandatory for proposed restrictions. Several commenters regard the part 150 process as inadequate for purposes of public notice of proposed restrictions. There were two comments suggesting that additional requirements be added to the optional use of part 150 procedures, and two other commenters recommend FAA financial assistance for airport operators to study restrictions.

Response: The FAA has decided to retain the part 150 process as an optional process. To make it mandatory would overstep statutory authority. For those airport operators that dislike this option, it need not be used for compliance with part 161. However, the part 150 option does make Federal financial assistance available to airport operators to analyze a proposed restriction.

Other revisions to proposed § 161.211 have been made in response to comments and to clarify the mechanics of using this optional procedure. The FAA found particular merit in commenters' concerns that using the part 150 process may not provide adequate notice with respect to a

proposed restriction. This may occur in the part 150 process because a restriction is likely to be one of many noise remedies under consideration and may not have been considered by the airport operator at the outset of the part 150 study. Therefore, although interested parties would be aware that a part 150 study is underway at a particular airport, they may not be aware that the part 150 study includes a proposed use restriction under part 161.

To remedy this, the rule now requires in § 161.211(b)(1) that the airport operator ensure that all parties identified in § 161.203 for direct notice of a proposed restriction on Stage 2 aircraft operations are notified that the part 150 program will include a part 161 restriction and are offered the opportunity to participate as consulted parties. The notification need only include this information, and no additional newspaper or public-display notice is required. If an airport operator anticipates including a proposed Stage 2 restriction in a part 150 program when initiating the process, the direct notification of all required parties must be accomplished at that time. On the other hand, if a proposed Stage 2 restriction on aircraft operations is considered later, after the part 150 study has begun, the airport operator must ensure that all appropriate parties are notified. The final rule therefore requires the airport operator to notify affected parties that are not already participating in the part 150 study; without such notice, these parties may be unaware of the inclusion of the proposed restriction. The FAA anticipates that most of these parties would, in fact, already be consulted parties, and that additional direct notifications could be held to a minimum. Section 161.211(b)(5) requires the airport operator to include in its part 150 submission evidence that all required parties have been notified and offered the opportunity to participate in the development of the part 150 program.

The FAA has now clarified in § 161.211(b)(4) that an airport operator must wait a minimum of 180 days, after completing all required notifications and making the analysis available for review, before implementing a proposed restriction on Stage 2 aircraft operations. The Act requires both notice and analysis 180 days before implementation of the restriction. If one requirement is fulfilled later than the other, which may occur in a part 150 process, the later time will govern the start of the 180-day waiting period. The rule permits implementation of a Stage 2 restriction under part 161 before either the completion of the part 150 program or the FAA's review of that program, as long as the notification, analysis availability, and 180-day waiting period requirements have been fulfilled. Section 161.211(b)(5) requires the part 150 submission to include evidence of fulfillment of the notice and other requirements.

The FAA encourages, but cannot require, an airport operator to wait until the FAA has reviewed and issued its determinations under part 150 before implementing a restriction on Stage 2 aircraft operations. Section 161.211(b)(5), added to the rule text, requires that the part 150 submission must identify the inclusion of a proposed part 161 restriction on Stage 2 aircraft operations. Also, as stipulated in new § 161.211(c), the FAA has no authority to either approve or disapprove proposed restrictions on Stage 2 aircraft operations under the Act, and so will not issue any such determinations under part 161. However, the FAA will issue appropriate part 150 approvals or disapprovals of all recommendations contained in a part 150 submission, including any recommended part 161 restrictions. The part 150 determination may provide valuable insight to the airport operator regarding the proposed restriction's consistency with existing laws, and the position of the FAA with respect to the restriction.

Section 161.211(d) has been added to clarify that an amendment of a restriction on Stage 2 aircraft operations, if subject to part 161, may also be processed using the part 150 option.

Subpart D concerns the approval of restrictions on Stage 3 aircraft operations that are not the product of agreements (within the scope of subpart B). In subsection 9304(c), the Act provides that no airport noise or access restriction on the operation 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 a restriction application not later than the 180th day after receipt, and may not approve a restriction unless there is substantial evidence that six statutory 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 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 available for an adequate public comment period; and (6) does not create an undue burden on the national aviation system.

To implement the requirements of the Act, the FAA proposed in the NPRM a four-step process that included: (1) An analysis of the restriction; (2) issuance of proposal and analysis for public comment; (3) submission of an application to FAA with a summary of substantial evidence of compliance with the six statutory conditions; and (4) FAA review process to approve or disapprove the application within 180 days.

Section 161.301 Scope

The proposed rule would have applied the requirements of this subpart to noise and access restrictions on the operation of Stage 3 aircraft that first became effective after October 1, 1990, and amendments to existing restrictions on Stage 3 aircraft operations if the amendment became effective after November 5, 1990. It did not apply to Stage 3 restrictions specifically exempted in § 161.7 or in an agreement under subpart B.

Consistent with subpart C, the rule has been revised to apply the requirements of the subpart to amendments of restrictions on Stage 3 aircraft operations if they become effective after October 1, 1990, rather than November 5, 1990. The Act explicitly states that limitations on Stage 3 restrictions apply only to those that first become effective after October 1, 1990. Thus, this limitation would also apply to amendments.

Section 161.303 Notice of Proposed Restrictions

The NPRM proposed to require notice of Stage 3 restrictions in a newspaper with national circulation; in an areawide newspaper of general circulation; and in aviation trade publications. The airport operator would be required to notify, in writing, aircraft operators serving the airport, those interested in serving the airport, the FAA, and each Federal, state and local agency with land-use control jurisdiction or facilities within the airport noise study area. The notice

was to include a description of the restriction, discussion of the need for the restriction, identification of aircraft expected to be affected, and an analysis of the proposed restriction or announcement of its availability.

Comments: As with subpart C, comments from air carriers generally support the notice requirements or recommend more stringent requirements. Sun Country Airlines comments that direct notification is necessary, and that the cost to aircraft operators to watch for notices in unspecified newspapers and trade journals would far exceed the cost to the airport operator of simply mailing a notice to aircraft operators. Northwest Airlines believes that the notice requirements should be expanded to include communities that receive service from the airport imposing restrictions. The Port of Seattle comments that notice in a newspaper alone is not sufficient, and SAFE supports direct notification to all interested parties.

As reflected in comment submissions, airports generally believe that the requirements are too costly and burdensome, and far exceed the requirements of the Act. The Port Authority of New York and New Jersey supports eliminating the requirement of individual notice because it is burdensome, unnecessary, and could create an alleged procedural defect due to the difficulty of determining who must be notified. The City of Cleveland comments that no regulation should be so vague as to require notice be sent to any aircraft operator known to the airport operator to be interested in serving the airport that could be affected by the restriction. It states that such a requirement leaves the operator uncertain as to whether it has satisfied the regulatory requirement.

Response: The notice requirements for proposed restrictions on Stage 3 aircraft operations in the rule have been modified as a result of the comments, and these revisions are consistent with the revised rule requirements for proposed restrictions on Stage 2 aircraft contained in subpart C. The FAA maintains that direct notification is essential, but has changed the rule to be more specific in identifying whom to notify. Some of the costly publication requirements have been eliminated. The rule requires that all airports follow these notice procedures to ensure that complete and consistent information is provided to affected or interested parties.

The rule eliminates the requirement for publication in a newspaper with national circulation and in aviation trade publications. Airport operators are still required to publish a notice in an areawide newspaper(s) of general circulation that covers all land-use planning jurisdictions included in the airport noise study area. The requirement to directly notify Federal, state, and local agencies has been limited to those with land-use control jurisdiction within the airport noise study area, rather than all agencies with facilities in that area, thus further easing the burden of notification.

As with Stage 2 notice requirements, the rule includes new requirements that airports must post a notice of a proposed restriction in the airport in a prominent location accessible to airport users and the public and must directly notify community groups and business organizations in the affected area known to be interested in the proposed restriction, fixed-base operators, and other airport tenants whose operations would normally be affected by the restriction. Under the rule, air carriers include potential new entrants that are known to be interested in serving the airport, aircraft operators providing scheduled passenger or cargo service, operators of aircraft based at the airport, and aircraft operators known to be routinely providing nonscheduled service at the airport that may be affected by the proposed restriction.

The rule includes one change to the information required in the notice. As the rule now allows for submittal of alternative restrictions to the FAA, the notice now must indicate if an alternative restriction(s) is being considered and an applicant must conduct an analysis for each alternative restriction submitted.

Section 161.305 Required Analysis and Conditions for Approval of Proposed Restrictions

The analysis requirements proposed in the NPRM were designed to provide the FAA with the information necessary to make the statutorily required finding, while limiting the compliance burden. As structured in the NPRM, the analysis requirements in § 161.305 were positioned separate from the evidence requirements supporting the conditions for approval in § 161.317.

To support the conditions for approval, FAA proposed the same cost-benefit analysis for Stage 3 restrictions as for Stage 2 restrictions. In addition, the NPRM proposed requiring the analysis of the restriction to include seven specific elements: (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.

Within these general requirements for analysis, the NPRM proposed guidance on the type of information that should be developed as the basis for the analysis, if the information is reasonably available and appropriate in the particular case. There were no mandatory requirements, only guidance within specific components of the required cost-benefit analysis to allow for greater flexibility.

The NPRM did propose to require that analysis be conducted in accordance with generally accepted professional practice for estimating costs and benefits and applicable Federal guidelines for analyses of noise.

The NPRM invited the public to comment on aspects of the analysis with the following questions:

Are the proposed analysis requirements appropriate? How would compliance with the conditions of approval be demonstrated in the absence of equivalent analysis? Should the elements of analysis for proposed restrictions on Stage 3 aircraft be detailed in the rule, or described in an FAA advisory circular? Should all applicants be required to consider a specific list of costs and benefits in the analysis of the proposed restrictions on Stage 3 aircraft operations, rather than have the flexibility as proposed? 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?

Comments: On the question of whether proposed analysis requirements are appropriate, there was a substantial number of comments. Generally, air carriers and aircraft manufacturers supported the analytical requirements, while airports and community groups opposed the proposal.

The ATA, the Air Freight Association, UPS, Federal Express, Northwest Airlines, Airborne Express and NBAA support the elements of analysis as essential ingredients to understanding the effect of a proposed restriction, and do not believe that any significant changes are in order. Opposing this viewpoint are many airports, noise organizations, and community groups, including Good Neighbor Council, Grant Godwin, Metropolitan Council of

Governments, Raleigh-Durham Airport Authority, Airports Commission of the City and County of San Francisco, CLASS, the Port Authority of New York and New Jersey and the EPA. These commenters argue that the proposed analyses would be so burdensome, costly, and time-consuming that airports would be unable to comply with analytical requirements, and therefore would be effectively precluded from imposing restrictions on Stage 3 aircraft operations.

The Metropolitan Washington Council of Governments complains that detailed information on industry- and airline-specific cost and operational data is proprietary information and may be unavailable to the airport. The Los Angeles City Department of Airports adds that, with respect to air carrier profits, FAA should solicit such information directly from airlines. Bridgeton Air Defense objects to the use of economic impact studies in analyzing restrictions, asserting that they are not a good tool for making financial decisions because components of analysis (such as multipliers) can be utilized to skew results to support predetermined outcomes. The Suburban O'Hare Commission wants FAA to encourage airports to more fairly evaluate the benefits of Stage 3 restrictions. The NAWG states that FAA has excluded from the cost-benefit analysis the benefits to noise victims of relief from health, educational, and occupational injury achieved through imposing a Stage 3 restriction.

There was widespread support among airports and community groups such as the AOCI, AAAE, City of San Joe, Westfield Citizens Against Aircraft Noise, Massachusetts Port Authority, and the Metropolitan Washington Council of Governments, to delete the requirement to produce a complete draft environmental document. They note that this requirement can be costly and lengthy, delaying implementation of restrictions. The Los Angeles City Department of Airports contends that approval and disapproval of proposed use restrictions do not constitute "a major federal action" under National Environmental Policy Act of 1969 (NEPA) and therefore an environmental impact statement is not required. In contrast, the National Resource Defense Council finds value in the requirement to include a complete draft environmental analysis.

The Raleigh-Durham Airport Authority claims that further guidance is needed as to whether an airport's proposed restrictions would survive scrutiny. It further asserts that the FAA should be involved early in the development process, provide technical and financial assistance for economic and environmental studies, and assist airport operators in meeting substantive FAA requirements. A joint submission for Adams County Coordinating Committee, et al., also supports FAA involvement in providing data, guidance on NEPA compliance, and advice on measures acceptable to the FAA.

Finally, the Massachusetts Port Authority objects to the proposed requirement in § 161.305(h) to use "currently accepted economic methodology and reflect current airline industry practice." It argues that this requirement is vague, stating further that airport sponsors cannot be expected to properly reflect current industry practice when individual airlines have widely different accounting treatment of assets, costs, operational procedures, etc.

Few comments were received on the question of how compliance with conditions of approval would be demonstrated in the absence of equivalent analysis. The AFA thinks it would be virtually impossible; however, it states that an applicant should be free to provide additional information if it chooses.

There was consensus among commenters that the elements of analysis should be detailed in the rule rather than described in an FAA Advisory Circular. The AOCI and AAAE add that examples of methods for compliance and types of studies that could be done may be included in an advisory circular.

Another question in the NPRM asked if all applicants should 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.

The NATA recommends that FAA require the airport sponsor to include an evaluation of the proposed restriction's impact on the fixed-base operator's economic operating environment.

The U.S. Chamber of Commerce urges FAA to include the effects on businesses, competition, and interstate commerce.

The Air Freight Association claims that, as applicants must demonstrate compliance with the conditions of approval, maximum flexibility should be retained to allow tailoring analysis to the specific problems. However, the Air Freight Association suggests that it would be useful for applicants to be aware of the type of cost-benefit data the FAA considers to be appropriate. The AOCI and AAAE also support flexibility, but point out that the rule should specify any particular costs and benefits that the FAA wants provided. The Chicago Association of Commerce and Industry recommends that the rule require airport operators to include in their submission an analysis of the cumulative effect on commerce of the proposed restriction, as well as restrictions already in effect. This analysis of cumulative effect on commerce would include the total effect on airport capacity and on the volume of passengers and cargo for the year of implementation, as well as the number of affected operations by class of user (and for air carriers, the number of operations by carrier)—the elements already proposed by § 161.305(e). In addition, the commenter recommends that the analysis of cumulative effect include impacts on specific city-pair markets.

The EPA wants the FAA to specifically state in the rule that non-monetary benefits (such as reduction in population highly annoyed, reduction in population likely to be awakened, etc.) should be analyzed.

Thomas Murray insists that the analysis must be rigorous. He maintains that it must include modern techniques for both qualitative and quantitative procedures and must contain a specific list of items to be included in the analysis, including ecological, physical, and psychological factors.

Comments were also sought on whether the required analysis of a restriction on Stage 3 aircraft operations should vary with the type of airport or type of restriction and, if so, identification of the categories to be established to differentiate analysis requirements.

The ATA contends that, as in the basis of Stage 2 restrictions, standards for analysis should not vary on the basis of type of airport/type of restriction, although the content of the analysis will vary on the basis of significance and complexity.

The Air Freight Association and McDonnell Douglas also strongly support uniform rules. Air Freight Association adds that attempting to define different categories of airports and/or restrictions is an impossible task and will necessarily lead to further problems in the future. Federal Express concurs, stating that standardization is important for non-discriminatory application of the national noise policy regulations. The UPS believes that the FAA should allow some flexibility in how the analysis is conducted, but that the same analysis and evidence

requirements should apply to all types of restrictions.

Conversely, airports and local communities tend to support some differentiation in analysis. The AOCI and AAAE, echoed by the City of Long Beach, suggest that categories of airports might include high-density airports, other large hub airports, mixed general aviation and air carrier airports, and general aviation airports. They further add that analysis requirements may vary according to the extent that a restriction would preclude operations by a particular class of aircraft: restrictions limiting noise without prohibiting an aircraft's use may require a lower level of analysis than one that would totally exclude an aircraft.

Another commenter, Charles Feltus, Chamblee, Georgia, states that the required analysis should vary according to the size and uses of the airport. Rules appropriate for major airports served by the commercial fleet may be inappropriate for general aviation and reliever airports. The City of Torrance strongly recommends that distinct and different regulations should apply to general aviation versus commercial facilities. The City of West Palm Beach, Florida, suggests that an aircraft's specific noise characteristics may dictate differentiating requirements.

Response: As a result of the comments received, the rule reflects a major restructuring of this section to align the conditions for approval with the analysis requirements. This modification is intended to illustrate how the analysis will be used in the approval process to support each of the six conditions for approval. Proposed § 161.317, Conditions for approval, is deleted from the final rule. Relevant components of proposed § 161.317 have been incorporated into this revised § 161.305 as suggested elements of analysis.

There was consensus among commenters that elements of the analysis should be detailed in the rule rather than in an FAA advisory circular. To the extent that the elements can be stated in general enough form to assure application to a wide range of potential restriction types and airport circumstances, this has been accomplished in the final rule. Applicants may consult with FAA staff in advance of the development of a proposed restriction for further suggestions on analysis techniques and sources of information on analysis methods.

Revised § 161.305 requires that the applicant provide: (1) The complete text of the proposed restriction and submitted alternatives; (2) maps denoting the airport geographic boundaries; (3) an adequate environmental assessment or adequate information supporting a categorical exclusion; (4) a summary of the evidence supporting the six statutory conditions for approval; and (5) an analysis of the restriction demonstrating substantial evidence of fulfillment of the statutory conditions. All of this information was required in the proposed rule, although some has been consolidated into § 161.305 in the final rule from other sections.

Within the analysis of the restriction, substantial evidence must be provided for each condition. For each condition, the final rule stipulates minimum evidence to be submitted as well as evidence that may be submitted if it is appropriate and provides further support for the requisite condition. For example, for condition 1, stating that the restriction is reasonable, nonarbitrary, and nondiscriminatory, evidence should be provided that a current or projected noise or access problem exists, and that the proposed actions will relieve the problem. In addition, evidence required to support other conditions (i.e., that expected net benefits of the proposed restriction exceed the benefits of other alternatives) will support the reasonableness of the restriction. For each condition of approval, the FAA has identified and mandated the analytical requirements that are essential to approving the restriction and indicates the type of evidence and analysis that would assist the applicant in providing substantial evidence that the conditions of approval have been met.

Under condition 2, evidence must be submitted that the estimated potential net benefits are positive, but the applicant has latitude in considering, as it believes appropriate, the components of costs and benefits, and the level of analysis of alternatives. In response to comments regarding the benefits of restrictions, the rule clarifies the FAA's original intent that benefit analysis should be rigorous. The applicant can, in addition to describing other benefits, including improvements in quality of life, quantify the noise benefits, such as numbers of people removed from noise contours, improved workforce and/or educational productivity, or other benefits.

The final rule deletes the proposed requirement to "reflect current airline industry practice" in response to comments that compliance with this requirement would be difficult in the absence of consistent industry practice.

With respect to concerns expressed regarding the availability of required data, FAA emphasizes that it does not expect applicants to attempt to acquire proprietary information. Analysis can be developed using publicly available data, published in corporate annual reports or in Security and Exchange Commission (SEC) filings, or submitted to the Department of Transportation. While the FAA will not develop analysis for an applicant, program staff will be available to direct applicants to sources of data. It should also be noted that participants in the 14 CFR part 150 program are eligible to receive funding for conducting studies, which may mitigate concerns as to the cost of developing an analysis.

Finally, FAA decided not to differentiate analytical requirements by airport or restriction type. There was widespread concern among commenters that such differentiation could lead to the very problem, the "patchwork quilt" among airports, that the national noise policy is attempting to eliminate.

Section 161.307 Comment by Interested Parties

The proposed rule text for this section was reorganized, but no substantive changes were made. Paragraph (b), requiring applicant notice to interested parties of any change to the proposal, was moved to § 161.309 for more appropriate placement. The former paragraph (c), requiring submission to the FAA of evidence of notice, was deleted as redundant (addressed elsewhere in the rule). A new paragraph (b) makes clear an applicant's required submission of a summary of comments to the FAA and full text of comments on request.

Section 161.309 Requirement for New Notice

The proposed rule would have required airport operators to initiate a new notice if it makes substantial changes to the proposed restriction or the analysis during the 180-day notice period. A substantial change included, but was not limited to, a more restrictive proposal or a revision that alters the way impacts are apportioned among aircraft. If a substantial change is made during the FAA's 180-day review of the proposed restriction, the applicant must notify FAA in writing that it is withdrawing its proposal from the review process until it has completed additional analysis, notice, and comment.

Comments: As with the new notice requirement for proposed restrictions on Stage 2 aircraft operations, some commenters believe that beginning the 180-day period for approval again for a proposal revision is excessive and could seriously impede the local rulemaking

process, as well as make airport operators inflexible to change. Other commenters believe that any change to a proposed restriction should trigger a new comment period.

Response: As with subpart C, the rule is revised to limit the definition of substantial change. The final rule retains the requirement for the 180-day FAA review process to begin again for substantial changes. However, the illustration of "substantial change" is now limited to a change that would increase the burden on an aviation user class. The rule now eliminates changes in apportionment of the restriction's burden as a "substantial change" because there may be cases where, although a change in apportionment occurs, the adverse impact on all parties is decreased. The airport operator may consult the FAA for guidance if it is uncertain whether a change is substantial and merits restarting the review process. While the FAA does not want to discourage changes to restriction proposal during the 180-day period, it is essential that interested parties have ample time to review and comment on the changes. As with proposed restrictions on Stage 2 aircraft operations, a likely case will be a change resulting from the 45-day notice and comment period. In such a case, the airport could expeditiously revise its restriction and/or analysis, adding perhaps as little as 60 days to the 180-day period.

Section 161.311 Application Procedure for Approval of Proposed Restriction

As proposed, this section would require applicant submission of the requisite analysis, summary of evidence as to the conditions, evidence of a public comment period, and a statement that the applicant is empowered to implement the restriction or represents that empowered party. Although the rule has been revised to more clearly align analytical requirements with the six statutory conditions for approval, it is still advantageous for the applicant to summarize how the analysis supports the conditions. Aside from minor textual edits and reorganization, there are two substantive changes in the rule text. Former paragraph (c), requiring submission of evidence of public notice and comment, was deleted from this section as this requirement is replicated elsewhere in the rule text. A new paragraph (d) has been added requiring the applicant to state whether, in the event of disapproval of the restriction or any alternative, the applicant wishes the FAA to grant partial approval of a restriction if that part of the restriction meets the statutory conditions. Partial approval, as discussed above in the major issue section "Total Versus Partial Approval," could expedite the review and approval process.

Section 161.313 Review of Application

As proposed in the NPRM, this section would set forth FAA responsibilities for review of applications. Several minor textual changes were made in the rule that do not result in substantive changes of the rule. Substantive changes include one made in paragraph (a) to specify that FAA determinations of completeness will be made on all submitted proposed restrictions and alternatives. Paragraph (c) was amended to accommodate submission of alternative proposals. Discussion of submission of alternatives is provided above in the general issue section "Total Versus Partial Approval." Amending language added to paragraph (c)(4)(iv) assures that environmental documentation encompasses an environmental assessment or information supporting categorical exclusion. Finally, paragraph (c)(5) was revised in the rule to make explicit when FAA will deny an application for incompleteness and return it to the applicant, closing the matter without prejudice.

Section 161.315 Receipt of Complete Application

The section provided that FAA would publish a **Federal Register** notice of the proposed restriction, inviting comments for a 30–day comment period. It also established that the FAA would notify an applicant of FAA's intent to rule on a complete application. The text of this section remains unchanged in the final rule.

Section 161.317 Conditions for "Approval

As proposed, once the analysis was complete, the NPRM required the applicant to submit substantial evidence, drawn from the analysis, showing that the six statutory conditions for approval had been met. The NPRM set out criteria that FAA considers to be essential elements of acceptable evidence of fulfillment. 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. For each condition for approval, the applicant would select that evidence appropriate to analyzing the particular restriction.

The NPRM stated that the burden of analysis should rest with the applicant to prove substantial evidence of compliance with the six statutory conditions. FAA queried the public with respect to submissions of evidence with the following specific questions:

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? 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?

Comments: The Air Freight Association asserts that it is essential for applicants to provide adequate information on undue burden on interstate commerce and on the national transportation system. Airborne Express comments that all the evidence requirements set forth in proposed § 161.317 should be mandatory.

The ALPA suggests that the FAA review process include analysis of the safety implications of a proposed restriction, and proposed specific language to satisfy its safety analysis concerns. The ALPA wants the rule to require "an analysis of the effects of the proposed restriction on the safety of flight operations; on the use of airspace in the vicinity of the airport, including the interface with en route airspace; on other safety considerations; and on environmental factors other than noise." Further, ALPA suggests revising § 161.317(c) to require that "evidence shall include at a minimum, a showing that the effects of the proposed restriction will not be contrary to applicable existing safety regulatory schemes."

The NAWG and Westchester County, New York, want clarification of terms, specifically undue burden. Absent such definition, NAWG wants to shift the burden of proof to the FAA to establish that any proposed restriction constitutes an undue burden on the national aviation system. The City of Cleveland wants to shift the burden of proof regarding reasonableness of a proposed restriction to those parties opposing the proposal.

The NOISE argues that, as the FAA is in possession of facts essential to establishing substantial evidence of

conditions for approval, it should assume this burden of evaluating the conditions.

Finally, the NPRM questioned whether evidence requirements for approval of restrictions on Stage 3 aircraft should vary with either type of airport or type of restriction and, if so, identification of categories to differentiate evidence requirements.

The Air Freight Association again states that uniform rules are more appropriate. The UPS also asserts that evidence requirements should apply to all types of restrictions. According to UPS, standard evidence requirements are crucial. It also claims that any restriction on Stage 3 nighttime operations should be viewed as a per se burden on interstate commerce, and that—in UPS' view—evidence submitted will probably result in a finding of undue burden.

Response: As indicated above in the discussion of § 161.305, § 161.317 of the proposed rule has been deleted, but its evidence requirements and guidance for approval have been incorporated into the required analysis of § 161.305. Because the conditions for approval were mandated by statute, there is no change in the requirement that applicants must submit substantial evidence to support each condition for approval.

With respect to evidence submissions, FAA has determined that some components of evidence within each of the six conditions for approval are essential, and § 161.305 indicates which evidence is mandatory. Mandatory evidence requirements are consistent for all airports and types of restrictions.

Section 161.317 Approval or Disapproval of Proposed Restriction

Formerly designated § 161.319 in the NPRM, this is now § 161.317 because of the changes noted in the discussion above. As proposed, this section addressed FAA review of proposals and issuance of its approval or disapproval determination. It further identified those conditions on which a disapproval would be issued, FAA's authority to approve only Stage 3 restrictions, and FAA conditional approval of a proposed restriction.

This section has been revised and reformatted to accommodate submission of alternative proposals and to clarify that FAA will only act upon complete propoals, in the order of preference indicated, contained in an application. A complete proposal consists of a proposed restriction and all required analysis associated with the proposal. If an applicant chooses to submit alternative proposals, an application may contain more than one complete proposal. If upon evaluation the FAA does not approve any proposal, and if the applicant has requested partial approval as an option, the FAA may approve part of a proposal that meets the statutory conditions for approval.

§ 161.319 Withdrawal or Revision of Restriction

Formerly § 161.321, this section, as proposed, established requirements for withdrawal or amendment of a restriction, as well as specifying what amendments to restrictions are under this part. Apart from minor text clarifications, this section was revised in the final rule to clarify that a subsequent amendment to a Stage 3 restriction that was in effect after October 1, 1990, is covered in this subpart.

Section 161.321 Optional Use of 14 CFR Part 150 Procedures

Formerly proposed as § 161.323, this section would allow the airport operator to utilize the notice and comment procedures contained in 14 CFR part 150 as an alternative to the notice and comment requirements contained in this subpart, and to include the analysis required in this subpart in the airport operator's part 150 program submission.

Comments: The same comments were received on the proposed optional use of 14 CFR part 150 procedures for proposed restrictions on Stage 3 aircraft operations as were received for Stage 2 aircraft restrictions. These comments have been adequately summarized in the discussion under subpart C above.

Response: In the rule, this section is renumbered as § 161.321. As with proposed restrictions on Stage 2 aircraft operations, the part 150 process will remain an optional procedure in the rule for proposed restrictions on Stage 3 aircraft operations. As noted above, part 150 studies, whether for restriction proposals for Stage 2 or Stage 3 aircraft operations, are eligible for Federal financial assistance.

The FAA has made some revisions to the optional use of the part 150 process with respect to restriction proposals for Stage 3 aircraft in response to comments and in order to clarify the mechanics of using this optional procedure. Section 161.321(b)(1) requires that the airport operator ensure that all parties identified in § 161.303 for direct notification of a proposed restriction on Stage 3 aircraft operations are notified that the part 150 program will include such a restriction and are offered the opportunity to participate as consulted parties. This revision is in direct response to comments pointing out a potential deficiency in notice under the part 150 option. The FAA concurs that this could be a problem, and identical revisions in subparts C and D have been made for proposed restrictions on Stage 2 and Stage 3 aircraft operations, respectively. The complete discussion of this revision is presented above under subpart C. The airport operator's part 150 submission must include evidence of the required notifications.

Section 161.321(b)(3) requires the airport operator to clearly identify that the part 150 submission includes a proposed part 161 restriction on Stage 3 aircraft operations for FAA review and approval under part 161, and to include the information required in § 161.311 for a part 161 application.

As clarified in § 161.321(c), the FAA will review the proposed part 161 Stage 3 restriction included in the part 150 submission in accordance with the procedures and standards in part 161. The FAA will review the part 150 submission, in its entirety, in accordance with the procedures and standards of part 150.

In § 161.321(d), the rule explicitly states that an amendment of a Stage 3 restriction may also be processed under 14 CFR part 150 procedures to the same extent as an initial submission may be.

Section 161.323 Notification of a Decision Not to Implement a Restriction

Proposed as § 161.325, this section stipulated certain applicant action if an approved restriction is not implemented. The proposed text is not changed in the rule.

Section 161.325 Availability of Data and Comments on an Implemented Restriction

This new section was added to this subpart, as well as elsewhere in the rule text, in response to comments. Addressed in detail under a different subpart discussion, this section answers commenters' concern that data and comments on the initial restriction application be available for inspection or use by proponents of a restriction reevaluation at a later date. Consequently, this section requires that data and comments be retained by the airport for as long as the restriction is in effect, and that they be made available for inspection if the FAA has determined that a reevaluation of that restriction is justified.

Subpart E of the proposed rule implements the Act's directives regarding reevaluation of agreements or restrictions affecting Stage 3 aircraft operations. Changes of the proposed subpart text for the final rule are minimal, but not insignificant, and are

discussed in detail below. Revisions were based upon comments and FAA's own determinations of needed changes. Most significent are the lessened notice requirements (changed throughout the rule); the greater specificity regarding both the scope of application and the reference point for the noise-level change triggering reevaluation candidacy; and the more explicit statement of required data retention and accessibility.

Comments: Comments evidence considerable general support for the reevaluation process detailed in the NPRM, but there were some aspects of the procedure that prompted specific requests for changes or clarification. Comments addressing issues pervasive to subpart E will be dealt with first, with comments referencing issues contained in specific sections discussed in the appropriate section below.

The NAWG's comments express concern that adverse findings on reevaluations can interfere with contractual obligations, hampering airports' financing ability and capital market access.

Resoponse: While the FAA is sensitive to the capital market funding position of airports, as is apparent from the procedure for imposition of sanctions in subpart F, the FAA's action regarding reevaluations is pursuant to statutory directive. Moreover, while the FAA action may affect an existing contract, the FAA is not a party to the contract, and both contracting parties presumably are aware of the potential for reevaluation. As with the imposition of sanctions, it is assumed that capital market sources will factor the cost of this possibility into the cost of capital.

Comments: Responding to the NPRM question as to what access reevaluation petitioners should be allowed to data that had supported the initial restriction approval, the NBAA and UPS comment that access to data utilized by airport operators in the restriction application is necessary.

Response: The FAA is persuaded that accessibility must be assured for information regardings limitations on Stage 3 aircraft operations contained in agreements under subpart B and in restrictions under subpart D. Consequently, new §§ 161.109 and 161.325 were added to the final rule text in subparts B and D, respectively, to require retention of data and comments for the duration of the restriction and their availability for inspection during the pendency of reevaluation of restrictions on Stage 3 aircraft operations, once FAA determines that a reevaluation is justified.

Section 161.401 Scope

This subpart, in accordance with statutory directive, applies only to restrictions on Stage 3 aircraft operations that were agreed to under subpart B or implemented under subpart D. This section also notes the statutory exceptions to reevaluation. One text amendment to the rule clarifies this subpart's conformance with the Act's mandate that reevaluation apply to Stage 3 aircraft operation restrictions that first became effective after October 1, 1990.

Comments: The Metropolitan Washington Council of Governments and Newport Beach, California, request that the final rule clarify the nonapplicability of the reevaluation process to statutorily exempted restrictions listed in section 9304 of the Act.

Response: Upon review of this text, the FAA finds that § 161.401 makes applicability sufficently explicit as to the statutory exemptions, and that further explanation of applicability to grandfathered restrictions is unnecessary.

Comments: Comments from Airborne Express and San Jose, California, state that reevaluation should not be applied to agreements.

Response: The FAA notes that subsection 9304(f) of the Act provides for Secretarial reevaluation of any restrictions previously agreed to or approved under subsection (d) of the Act (addressing approval of restrictions on Stage 3 aircraft operations). The final rule reflects this statutory directive in not exempting agreements with Stage 3 aircraft restrictions from reevaluation under subpart E.

It should also be noted that, with regard to reevaluation, the Act refers solely to agreed-to or FAA-approved restrictions on Stage 3 aircraft. This statutory limitation is adhered to in the rule, as it does not permit reevaluation of restrictions on Stage 2 aircraft operations.

Section 161.403 Criteria for Reevaluation

As proposed, this section mirrored the statutory mandate that only an aircraft operator may request a reevaluation, and set forth the initial criteria that must be met for an FAA determination that a reevaluation is justified. The reevaluation applicant was required to submit evidence demonstrating a change in the noise environment or noncompatible land use that results in at least one of the statutory conditions for approval in § 161.305 being violated, as well as evidence of local attempts to resolve any dispute over the restriction. This section also established a two-year waiting period, after a restriction is implemented, prior to a reevaluation request. This section remains largely unchanged in the final rule, except for two clarifications that are noted in the discussions below.

Comments: One cargo carrier, Airborne Express, maintains that applying the two-year wait for reevaluation of an agreement is beyond the statute.

Response: The FAA did change the proposed text with the insertion of the word "normally" to emphasize the flexibility of the rule: that the two-year wait will typically—but not rigidly—ba applied to reevaluation of agreements.

Comments: The ALPA endorses the proposed quantitative criterion of a 1.5 dB change in the noise environment to trigger reevaluation, but the National Airport Watch Groups argues that the threshold for reevaluation should be 3 dB. The latter's comments note that this higher threshold would ensure that benefits would be achieved without hazard of rollback.

Response: This latter comment reveals a need to clarify of the 1.5 dB change requirement. The 1.5 dB change relates to the target goal, that is, it is not a change from the initial noise level, but a change from the target goal. To prevent similar misinterpretations, the proposed text of § 161.403(b)(1) is amended to clarify that calculation of noise-level change is to be based on the divergence of the actual noise impact of the restriction from the estimated noise impact predicted in the anaylsis required in § 161.303(e)(i)(A)(2).

Comments: The NAWG also wants the FAA to disallow consideration on a case-by-case basis of other criteria presented by aircraft operators for reevaluation, arguing that precise criteria must be identified in the regulatory language. The Airport Coordinating Team submitted comments requesting that the 1.5 dB change not be the sole determinant that reevaluation based on noise change is justified, and that single-event noise changes should be considered.

Response: Upon review of these suggestions, the FAA has determined that no change in the proposed rule language is necessary, as the present text provides sufficient latitude and flexibility for consideration of other evidence as appropriate.

Comments: Comments offered by ALPA request additional text to clarify that the two-year waiting period for reevaluation does not apply to safety

restrictions that are beyond the scope of proposed part 161.

Response: The FAA finds insertion of such language unnecessary, since regulatory requirements contained in one subpart of the Code of Federal Regulations have historically been not applicable to other regulatory subparts unless that application is explicitly noted.

Comments: Comments submitted by several towns in California, Arizona, North Carolina, Massachusetts, Michigan, and Colorado (in a joint submission), and by Massport request that petitions for reevaluations be permitted from local governments and citizens affected by airport operations.

Response: The final rule text adheres to the statutory limitation that reevalution be conducted only upon the request of an aircraft operator (subsection 9304(f)).

Comments: The burden imposed by the reevaluation process overall was discussed by several commenters. Five communities (in one comment submission) and the Metropolitan Washington Council of Governments argue it is unfair that aircraft operators may base a challenge to a restriction on only one of the six statutory criteria, while the restriction applicant must prove all six conditions. The UPS comments, however, note that this requirement is consistent with statutory language in section 9304 of the Act. The NBAA maintains that the burden of proving that reevaluation is justified may be too great for one general aviation operator to bear, and that the FAA should undertake the burden of proof once the aircraft operator demonstrates that reevaluation may be appropriate.

Response: This suggestion is contrary to the explicit placement of the burden provided in subsection 9304(f) of the Act. Due to the general concern expressed by numerous commenters regarding the burden of the notice requirements throughout the proposed rule text, the FAA has significantly minimized the burden of the notice requirements in § 161.407, discussed below.

Section 161.405 Request for Reevaluation

As proposed, this section stipulated information that must be submitted to the FAA by a reevaluation applicant to obtain FAA's initial determination of whether a full reevaluation of the restriction is justified. Proposed information requirements included a description of the restriction, evidence of both the change in the noise environment (required in § 161.403) and the likelihood that it results in violation of at least one of the statutory conditions for approval. Further, the applicant was required to provide evidence of local attempts to resolve the dispute. Section 161.405 also, described fact gathering that may be undertaken by the FAA and what procedures follow FAA determination that reevaluation is justified (completion of analysis and notice by the reevaluation applicant). No substantive changes were made to the proposed text of this section in the rule.

Comments: A joint submission of comments by five communities in various states suggest that the FAA not defer the bulk of analysis required for a reevaluation request until after its initial determination that reevaluation is appropriate.

Response: While this suggestion understandably reflects communities' desire to dissuade applications for reevaluations, FAA rejects this proposal as being unnecessarily costly and burdensome to those seeking reevaluations of restrictions.

Section 161.407 Notice of Reevaluation

As proposed, this section addressed the published and direct notice required by reevaluation applicants once reevaluation was determined to be justified by the FAA. It also set forth the requisite information for each notice. There was a significant number of comments addressing the burden of notice generally, for both initial restriction application and reevaluation. Consequently, after review of comments and FAA's own review of proposed rule requirements, the text of this section is revised in the rule to significantly lessen the notice burden to the extent possible consistent with the statutory and public interest mandate to assure sufficient notice to all interested and affected parties. This revised section also conforms to revised notice requirements in the rule text of subparts B, C, and D.

Consistent with revisions in other subparts, publication of notice in a national circulation newspaper and aviation trade publications has been eliminated. Published notice is now limited to an areawide newspaper or newspapers of general circulation that either singly or together has general circulation throughout the airport noise study area (or the airport vicinity for agreements at airports where a noise study area has not been delineated). A new requirement is added regarding posting of a notice in the airport in a prominent location accessible to airport users and the public. Because of the lessened published notice, direct notice is slightly expanded with respect to airport users, community groups, and business organizations in the affected area "and known to be interested in the greement or restriction.

Comments: Comments submitted by the Chicago Association of Commerce and Industry requested a longer minimum comment period, such as 90 days.

Response: After review of this suggestion, the FAA has decided to leave the proposed 45-day comment period unchanged. The 45-day minimum comment period in § 161.407 together with a subsequent 45-day comment period offered by the FAA provide ample opportunity for review and comment on the data available.

Section 161.409 Required Analysis by Reevaluation Petitioner

The analysis requirements in the proposed rule text for this section remain largely unchanged, with two exceptions. Section 161.409(b)(5) has been revised to require an adequate environmental assessment of the impact of discontinuing all or part of the disputed restriction, or information supporting a categorical exclusion under FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321). A second change was in response to commenters' observations as noted below.

Comments: Comments submitted by the AOCI and the AAAE contain valid observations on inappropriate terminology in proposed § 161.409(c). Specifically, they criticize the descriptions of restrictions that had been properly imposed and were being considered for reevaluation as alleged "violations" of the statutory conditions.

Response: As the commenters properly point out, such restrictions are not in violation of the statutory requirements merely because they were not unilaterally rescinded once conditions changed and they may no longer meet the statutory criteria. Therefore, the FAA has appropriately revised the rule text of § 161.409(c) and elsewhere as needed.

Section 161.411 Comment by Interested Parties

This section, as proposed in the NPRM, established procedures for receipt of comments to the reevaluation applicant and for notice to interested parties of any substantial changes made to the analysis that was initially available for comment. A 45-day comment period was required from the date the changed analysis is available. What was proposed § 161.411(c), addressing submission of evidence of

notice and a summary of comments to the FAA, is now in § 161.413(a) for more appropriate placement.

Section 161.411(a) is revised in the rule to clarify that comments need only be made available for inspection by interested parties. This paragraph continues, as initially proposed, to require that comments be retained for only two years following FAA reevaluation.

Section 161.413 Revaluation Procedure

As proposed, this section required that the applicant submit to the FAA the requisite analysis, evidence of notice, and a summary of comments; established FAA **Federal Register** notice of reevaluation, which begins a second 45-day comment period; and noted FAA ability to conduct additional information acquisition procedures as needed.

This proposed text remains generally unchanged in the rule, except for two changes that deserve cursory attention. One minor text reorganization of the proposed rule, as noted in the above discussion of § 161.411(c), is insertion of proposed § 161.411(c) (submission of evidence of notice and a summary of comments) into § 161.413(a), which references this documentary submission requirement to a lesser extent. Thus, a redundancy in the proposed rule was eliminated in the final text. In addition, a sentence was added to the end of § 161.413(b) to clarify that FAA will not act upon incomplete reevaluation applications.

Comments: The Chicago Association of Commerce and Industry's comments suggest that the airport operator submit the full text of all comments to the FAA.

Response: The proposed text remains unchanged in this regard, as it adequately addresses the accessibility of this information. Section 161.413 provides FAA access, upon request, to comments submitted to the applicant and the authority to gather any additional informative material as deemed necessary. Comments are also submitted directly to the FAA upon the **Federal Register** notice initiating the FAA's 45-day comment period.

Section 161.415 Reevaluation Action

This proposed section specified action subsequent to completion of the reevaluation process. If FAA found that the restriction met the statutory criteria, the restriction remained in effect; if the restriction was found to be not in compliance, FAA approval would be rescinded. FAA would publish a **Federal Register** notice announcing its findings, and also directly inform the airport operator and applicant aircraft operator. An airport operator would have to rescind a previously approved Stage 3 restriction or cease to enforce a Stage 3 restriction previously implemented by agreement.

One significant revision was made in the rule text of § 161.415(b) to allow continued implementation of portions of a restriction that are still in compliance. The revised text allows FAA withdrawal of a previous approval to the extent necessary to bring the restriction in compliance. This provision allows retention of parts of a restriction and permits continuation of some of the restriction's noise abatement benefits to surrounding communities to the extent permissible.

Section 161.417 Notification of Status of Restrictions and Agreements Not Meeting Conditions-of-Approval Criteria

In the NPRM, this section required FAA withdrawal of any previous approval of a restriction no longer in compliance and mandated that the airport operator rescind a previously approved Stage 3 restriction or cease to enforce a Stage 3 restriction previously implemented by agreement. One major change to the proposed text is made to the final rule to parallel the change made in § 161.415 regarding FAA withdrawal of its approval of that part of a restriction no longer in compliance. That noncomplying portion of the restriction must be rescinded by the airport operator and may no longer be implemented.

Subpart F contains the procedures that will be used to notify an airport operator of an apparent violation of part 161, and the procedures used to terminate airport eligibility for airport grant funding and PFCs once noncompliance has been determined. The penalties for an airport operator's failure to comply with the Act are set forth in sections 9307 and 9304(e), which state:

> Section 9307—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 restriction not in compliance with this subtitle.
>
> Section 9304(e)—Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first become effective after October 1, 1990, 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 undar section 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.

The FAA posed a number of questions in the NPRM regarding the proposed procedures. These questions included inquiries on methods to minimize adverse effects on capital markets of termination of AIP funds and PFC revenues, the feasibility of documenting necessary findings on the record without trial-type procedures, the appropriateness of the proposed notice procedures and comment opportunities, and the timing of the suspension of approval to impose a PFC and the disposition of PFC revenue after a determination of noncompliance.

The process proposed in this subpart has been significantly changed in response to comments and the FAA's own internal review. The final rule now provides a period for the FAA to attempt informal resolution to resolve the noncompliance issue with the airport. The airport now has two procedures from which to choose if informal resolution is unsuccessful. There is one process for airports that agree to defer implementation of the suspect restriction pending formal FAA determination, and another for airports that do not agree to defer implementation. While these two procedures are generally similar as to the substantive steps, the former does provide procedural and time-relevant advantages to the airport operator. In making this decision, the airport operator exercises some control over the timing of the sanction-determination process, as well as over the number of opportunities for input to, and consultation with, the FAA during this determination process. If a question arises whether a restriction is in compliance with this part, the airport operator choosing to defer implementation or enforcement of that restriction can avoid any adverse effect during the FAA process.

Section 161.501 Scope

This section delineates the scope of this subpart.

Comments: A number of general comments on this section were received. Several organizations, including ATA, note that the FAA has a number of enforcement tools, such as civil penalty action, to address violations of the restriction issuance requirements. The ATA asserts that the final rule should explicitly state FAA's intent to use all

enforcement avenues that are available and within the FAA's statutory authority to ensure compliance with national aviation noise policy goals. Several air cargo carriers and their associations interpret section 9307 to impose sanctions for noncompliance with any section of the Act, and suggest that the FAA also apply the Act's qqq sanctions for noncompliance with the Federal aircraft transition schedule contained in part 91 of the Federal Aviation Regulations. The Air Freight Association further suggests using the Act's sanctions for "imposing any such restriction in violation of any other existing law with respect to airport noise or access restrictions by local authorities."

Response: This section continues to delineate the scope of subpart F, setting forth the administrative process that will be used to determine compliance with part 161 and the Act and to impose sanctions. As suggested by several commenters, a sentence has been added to clarify that these procedures only supplement, and do not circumscribe, any other remedies that are available to the FAA and within the agency's statutory authority to promote voluntary compliance and impose sanctions for violations of the Act and the Federal Aviation Regulations. This sentence is intended to ensure the availability of other avenues in addition to termination of funds under part 161 and to preserve the FAA's authority to initiate proceedings in circumstances that warrant immediate action to protect the national aviation system. The FAA may seek judicial relief, such as an injunction to stop a restriction being implemented, without first completing an informal resolution process in a situation where an airport operator is imposing a restriction that threatens the national aviation system and related Federal interests. Such judicial action would not terminate funding. In order for funding to be terminated under part 161, the process outlined in part 161 must be completed. Such judicial action in no way affects the part 161 process itself.

Violations by air carriers of the aircraft transition requirements and nonaddition restrictions contained in part 91 are covered by section 9308(e) of the Act. That sction clearly states that violations of those sections and the implementing regulations are subject to civil penalties and the procedures provided in title IX of the Federal Aviation Act of 1958 for violations of title VI. Violations related to restrictions of Stage 2 and Stage 3 aircraft operations are subject to the sanctions contained in sections 9307 and 9304(e) of the Act (quoted above). Both sections require termination of both eligibility for airport grant funds and authority to impose or collect PFC's for violations.

Also added to the final rule is a new paragraph (b) that addresses two issues. First, it incorporates what was formerly § 161.503(a) of the proposed rule that prohibits a noncomplying airport's receipt of AIP funds or imposition or collection of PFC's. Second, this paragraph now provides that an airport's rescission or written commitment to rescind or not enforce a noncomplying restriction will restore the airport's compliance with the Act and this part.

Section 161.503 Informal Resolution; Notice of Apparent Violation

This section was not proposed in the NPRM, but is newly added to the rule. As with the recent rulemaking (14 CFR part 158, 56 FR 24254, May 29, 1991) related to passenger facility charges, several commenters express concern about the proposed part 161 procedures to terminate PFC authority and the economic disruption that such action could create. The FAA added this section for reasons similar to those raised in the part 158 rulemaking. Providing an informal opportunity to resolve the question of compliance prior to termination of PFC authority and AIP funds, as well as other changes to this subpart of the final rule, is intended to increase investor confidence in PFC-backed bonds, enhance the marketability of such bonds and, ultimately, reduce the amount of PFC revenue needed for interest and financing costs resulting from lower bond ratings and higher project financing costs. These changes should assure all parties that every effort will be made to resolve the compliance question prior to termination.

If efforts to resolve differences informally are not successful, the FAA will notify the airport operator in writing that a noise or access restriction may violate the Act or implementing regulations.

Section 161.505 Notice of proposed termination of airport grant funds and passenger facility charges

As proposed in the NPRM in former § 161.503, if the FAA received evidence or a complaint that a noise or access restriction was imposed in violation of part 161, the FAA would provide notice of the apparent violation to the airport operator. A 30–day period was proposed for the airport operator to submit satisfactory evidence of compliance with part 161. If the airport operator failed to do so, the FAA would notify the operator of the agency's intent to terminate AIP grants and revenues and rescind approval to impose PFCs. The FAA proposed to publish a notice to that effect in the **FederalRegister** and invite public comment on the notice. Following a review of all comments, the FAA would issue final determination regarding compliance with part 161 and the Act. If the FAA determined that the airport operator imposed a noncomplying noise or access restriction, the FAA would immediately discontinue payment of AIP funds, including reimbursement for costs incurred before issuance of the notice, refuse to execute new airport grant agreements, and rescind prior approval to impose PFCs.

Comments: AOCI and AAAE state that a public hearing should be required before a determination is made that an airport operator has imposed a restriction without complying with part 161. Both organizations believe that a reasonable time is needed before termination of PFC authority, particularly where PFC revenue is pledged to back bonds. The Port Authority of New York and New Jersey maintains that the FAA should take all reasonable action to assure bondholders and contractors of a reliable flow of PFC funds.

The Air Freight Association and Airborne Express argue that, because the sanctions are mandated by statute, the FAA has no discretion to attempt to minimize any adverse effects resulting from termination of AIP funds or PFC revenue. These organizations point out that sanctions should motivate compliance by airport operators, and the means for compliance are solely within an airport operator's authority and control. NBAA notes that the risk of losing funds will, as always, be a factor in the cost of capital, and the risk of deliberate violations by an airport operator is virtually nonexistent.

Response: As proposed, the subpart set forth a single administrative process to determine compliance with the Act. The FAA noted in the NPRM that the final rule could be revised after review of the comments and further deliberation by the agency. Implementing the suggestions of some commenters, the FAA has made several changes to the proposed procedures. The process and procedures contained in this subpart were drawn from both the procedures in part 158 and the procedures proposed for part 161. The most significant revision provides the airport operator with a choice of processes, based upon the airport operator's decision whether to deter

implementation of the restriction, after the FAA has advised the operator of a possible violation of part 161.

The rule presents the airport operator with the opportunity to choose the timing of the sanction determination process and the number of opportunities for consultation with the FAA during the process. The airport operator must inform the FAA within 20 days of the FAA notice whether it intends to defer implementation of the restriction until tha FAA completes its compliance determination. Deferral of implementation provides a longer sanction determination process with more opportunities to consult with the FAA prior to the FAA's determination of compliance, compared to the process triggered by an airport operator's decision not to defer implementation or enforcement during the FAA's determination process.

If the airport operator agrees in writing to defer enforcement or implementation of a noise or access restriction pending an FAA determination of compliance, the FAA will proceed with a process similar to that provided in part 158 for termination of AIP eligibility and PFC authority for violations of the PFC rule. However, in lieu of the public hearing provided in part 158, the FAA has provided a second opportunity for resolution or consultation, and the FAA also may solicit additional information from other parties. A public hearing is not provided because, unlike the complex financial issues surrounding use of PFC revenue in part 158, resolving the issue of compliance with part 161 and the clear requirements of the Act generally will be straightforward and simple determinations. The issues involved are: (1) Whether restrictions on Stage 2 aircraft are "grandfathered" or were issued pursuant to the notice and analysis required by section 9304(c) of the Act; and (2) whether restrictions on Stage 3 aircraft are contained in an agreement between the airport operator and all affected aircraft operators or have been approved by the Secretary under sections 9304(b) and (d) of the Act. Also, the statutory section providing for termination of AIP eligibility and PFC authority because of noncompliance does not require a public hearing, in contrast to the affirmative public hearing requirement in section 9110(e)(12)(B) of the Aviation Safety and Capacity Expansion Act of 1990 that is implemented in part 158.

Instead, part 161 provides several opportunities for airport operator participation and consultation in the determination process regarding possible termination of AIP funding and PFC authority. The first is after issuance of the notice of apparent violation and the second follows the **Federal Register** notice of proposed termination. If the airport operator agrees to defer implementation of the restriction, a third opportunity to consult with the FAA occurs after FAA receipt and review of comments prior to issuance of its determination.

If the airport operator agrees to defer implementation of the restriction, the final rule section requires FAA notice to the airport operator and **Federal Register** notice of the proposed termination, providing at least a 60-day comment period for interested parties. This notice states the scope of the proposed termination, the basis for the proposed action, and any corrective action the airport operator may take to avoid termination proceedings. At the close of the comment period, the FAA has at least 30 days in which to review comments and other information and consult with the airport operator in determining if the airport operator has provided satisfactory evidence of compliance or corrective action.

If the FAA finds compliance or sufficient corrective action, it will notify the airport operator and publish notice of compliance in the **Federal Register.** If the FAA finds the airport in violation of this part and without satisfactory corrective action, it will notify the airport operator in writing, prescribing corrective action where appropriate. The airport operator then has 10 days after receipt of this determination either to advise the FAA that it will complete stipulated corrective action within 30 days or provide the FAA with a list of air carriers that have remitted PFC's to the airport within the past 12 months.

After the 30–day period, if the FAA finds that sufficient corrective action has been taken, it will notify the airport operator and publish notice of compliance in the **Federal Register.** If satisfactory corrective action is not taken by the airport operator, the FAA will issue an order terminating airport grant funds and PFC authority and publish notice of termination in the **Federal Register.**

If the airport operator has not received approval to impose a PFC, the FAA will advise the airport operator that future applications will be denied. Notification to air carriers of the FAA's decision, and any termination or modification of PFC collection, will be accomplishd in accordance with the procedures recently adopted in part 158.

If an airport operator does not agree to defer implementation of a restriction, a shorter but similar process is provided. Assuring a prompt and timely determination of compliance is critical where the airport operator does not defer implementation. Many airport users could be adversely affected by implementation of a restriction while the FAA determines if such restriction was imposed consistent with the Act. Further, the airport operator is in the best position to know whether a restriction has been issued in compliance with the requirements of the Act and implementing regulations.

Because of the possible adverse impact on airport users when an airport operator does not defer enforcement or implementation, the FAA has not provided additional opportunity for consultation or informal resolution before issuing any further notices of compliance or orders of termination. Although the process is abbreviated, the FAA will still issue a notice of apparent violation, providing a 20-day period for response by the airport operator. If a notice of proposed termination is issued after review of the airport operator's response and any other information, the FAA will provide a 30-day period for interested parties to comment. The remainder of the process is similar to that discussed above.

The final rule clearly gives the airport operator influence over the timing of sanctions—termination of airport grants and PFC authority—if the FAA determines that a noise or access restriction may be in violation of part 161. Swift action would be taken by the FAA where a restriction may violate this part and airport users may be adversely affected. However, the airport operator may choose to defer the restriction while the matter is being resolved and thereby delay the imposition of sanctions.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements of this rule will become effective when they are approved by OMB.

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. These Federal decisions are subject to the requirements of NEPA.

In the NPRM preamble, the FAA indicated that it 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. The FAA further indicated that it did not have sufficient data on which to base a categorical exclusion for these proposals. Therefore, the proposed rule included a requirement in both subparts D and E for the applicant to submit to the FAA a draft environmental document together with its other analyses. The FAA would then independently evaluate this draft environmental document and use the information in it, supplemented as necessary by the FAA, to prepare a finding of no significant impact or, possibly, an environmental impact statement.

The FAA specifically invited comments on the above requirements imposed on applicants, on environmental considerations other than noise that should be analyzed, on whether noise and any other impacts may reach significant levels, on whether any data supported categorical exclusions of proposals submitted under subparts D and E, and on suggestions for alternative procedures for complying with NEPA.

Comments: The overwhelming majority of comments submitted on environmental issues oppose the requirement that applicants submit a complete environmental document for all proposed restrictions on Stage 3 aircraft operations, calling it an unnecessary burden. Some commenters regard the requirement as an intentional hindrance or delay of restrictions on Stage 3 aircraft. Others complain about the time and expense involved. For example, two commenters complain that the FAA is exceeding the statutory 180-day timeframe due to the draft environmental document requirement. A number of these commenters indicate that restrictions would improve, not adversely affect, the environment. Some commenters call for categorical exclusions for restriction proposals; others indicate that, at most, a finding of no significant impact would be necessary rather than a full environmental impact statement. However, no analytical data were submitted by commenters supporting either categorical exclusion or finding of no significant impact conclusions across the board. Several commenters confused the "draft environmental document" in the NPRM with "environmental impact statement" which heightened their concerns over the burden imposed on applicants. A few commenters seem to think that a draft environental document will be required for proposed restrictions on Stage 2 aircraft.

Commenters' suggestions for alternative procedures include some type of certification that an applicant has complied with NEPA and local environmental laws; a minimal checklist submitted by an applicant; the postponement of NEPA until after the application has been accepted; the FAA assumption of all NEPA documentation responsibility; and the tiering of very brief environmental documents from a programmatic environmental impact statement prepared by the FAA on both this part 161 rule and the amendment to part 91 effecting the Federal phaseout schedule of Stage 2 aircraft.

Several commenters concentrate on the array of environmental considerations that should be evaluated. These include noise (analyzed in accordance with comments by the EPA), density and number of people affected, air quality, water quality, seismic shock, safety, the cost of public health, quality of life, and wilderness areas. None of the commenters elaborate specifically on the relationship of these impacts to proposed restrictions. Finally, a number of commenters note the adverse noise impact of specific airports in their vicinity, without reference to the environmental document requirements in the proposed rule.

Response: The FAA has determined that changes to the proposed rule are warranted based upon the comments on the environmental documentation, as well as its own internal review of this issue. The FAA has replaced the phrase "draft environmental document" in the proposed text with "environmental assessment" in the final rule to clarify that an applicant's environmental evaluation is not expected to be a draft environmental impact statement. The FAA will objectively evaluate an applicant's environmental assessment, supplementing it as necessary, and the FAA will prepare either a finding of no significant impact or draft and final environmental impact statements, depending on the magnitude of the impacts.

The second revision in the final rule is to allow the applicant to submit, in lieu of an environmental assessment, adequate information supporting a categorical exclusion in accordance with FAA orders regarding compliance with NEPA. As stated in the NPRM preamble, significant environmental impacts are not likely with proposals under this rule. However, the FAA still does not have sufficient data on which to base a generic categorical exclusion of these proposals, and commenters who share the FAA's view did not present supporting analytical data. It is probable that in most cases an applicant would be able to submit sufficient data with respect to the environmental impacts of a specific restriction at a specific airport to adequately support the FAA's determination of a categorical exclusion on a case-by-case basis. Under the final rule, therefore, applicants may submit whichever is appropriate under FAA orders complying with NEPA: an adequate environmental assessment or sufficient information to support a categorical exclusion. The final judgment of adequacy and of what type of documentation is required resides with the FAA. The FAA is available to advise prospective applicants with respect to environmental requirements.

The changes described above have been made in relevant sections of subparts D and E. Subpart C, dealing with restrictions on Stage 2 aircraft, has not been changed since there are no Federal environmental requirements associated with that subpart. Restrictions on Stage 2 aircraft are not subject to FAA approval and, therefore, are not Federal actions subject to NEPA.

The FAA has considered the commenters' suggestions with respect to alternative environmental documentation procedures, but is not convinced of the merit in adopting any of the suggestions. Some of the suggestions appear to be inadequate to comply with NEPA, while others would more likely add to the time required to complete an environmental review. With respect to the commenters' complaints about delaying acceptance of applications until environmental documents are adequate, there should be no delay in starting the 180-day review if the applicant initially submits environmental documentation (either an environmental assessment or information supporting a categorical exclusion) that is adequate. As stated previously, the FAA is available to advise prospective applicants regarding the adequacy of environmental documentation. Part of this complaint is responded to by the clarification that the adequate documentation is not expected to be a draft environmental impact statement and may, in fact, not even need to be an environmental assessment. In determining the adequacy of environmental analyses, the FAA will rely on existing FAA

orders implementing NEPA; the FAA does not otherwise describe specific impacts in this rule, other than noise, that are required to be addressed.

Environmental Assessment of the Rule

This 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. While the FAA has discretion in its approval or disapproval of Stage 3 restrictions, its discretion is very limited with regard to the adoption of regulatory procedures set forth in this part.

This rule contains procedures for complying with the Act's specific requirements. The statutory framework severely limits the range of reasonable alternatives to those chiefly involving procedural implementation, and none of the alternative procedures within the FAA's discretion will itself have a significant effect on the quality of the human environment or foreclose needed environmental review when Stage 3 restrictions are being approved or disapproved.

In the preamble to the proposed rule, the FAA further delineated its reasons for determining that this rule has no significant impact, and invited comments relating to the environmental impacts that might result from adopting the rule. The proposed rule's preamble indicated that, prior to issuing a final rule, the FAA would 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).

A number of commenters, primarily those representing communities around airports or environmental organizations, maintain that the proposed rule would at best delay and at worst halt airport noise abatement efforts, with a resulting noise degradation impact. The great majority of these comments related to provisions in the Act itself. Only a few commenters specifically address environmental documentation required for issuance of the rule. The EPA comments that, unless the rule is revised to meet EPA noise concerns, it is likely to have a significant impact. A group of communities around airports and the NAWG recommend that a programmatic environmental impact statement be prepared by the FAA to cover this rule and the proposed amendment to part 91 regarding phaseout of Stage 2 aircraft.

Response: Most commenters on this issue base their concerns of significant environmental impact on provisions in the Act, which the FAA has no authority to abrogate in this rulemaking procedure. The FAA has made revisions in response to EPA's and others' concerns regarding noise analysis and the definition of the airport noise study area, as previously addressed in this preamble, and does not consider the rule to have a significant impact in this respect. The noise methodology, airport noise study area, and compatible land-use criteria in the final rule reference 14 CFR part 150, which has been in existence and use for a number of years.

The FAA has completed an environmental assessment of the final rule and has determined that the rule does not have a significant impact on the quality of the human environment, either by itself or when considered cumulatively with the amendment to 14 CFR part 91. Accordingly, the FAA has made a finding of no significant impact, which has been placed in the docket and is available for review. Because neither of these rulemaking actions, either separately or together, will have a significant impact on the quality of the human environment, a programmatic environmental impact statement is not appropriate.

Regulatory Evaluation Summary

This section summarizes the Regulatory Evaluation of the final rule that establishes 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 consumers or for individual industries, government entities or regions; a or significant adverse effect on competition, employment, or other significant determinants of economic growth.

Comments: A number of comments were received on topics related to issues contained in the NPRM's summary of the Initial Regulatory Evaluation.

With regard to the cost of providing notice to affected parties, AOCI and AAAE and the City of Long Beach indicate that, while it may be reasonable to require individual notice to airlines, the costs of notifying each general aviation operator would be excessive. They found the original definition of "aircraft operator" to be so broad that it might be interpreted to result in very costly notification procedures. One respondent expressed the view that notice by publication should be sufficient.

Comments on the cost of analysis requirements include a response from the Airports Commission of the City and County of San Francisco, expressing the view that the $200,000 estimate for analysis costs is too costly. It suggests, offering specific language, that the rule be revised to state that airport operators are not required to spend more than $100,000 for providing information and analysis.

The Maryland Aviation Administration states that the estimated $50,000–$300,000 cost may cover noise analysis, but not cost-benefit analysis and assessment of impacts on interstate commerce and the national aviation system, which might add $50,000–$200,000 to the cost. Westchester County, New York, is of the view that an additional $100,000–$150,000 will be required for NEPA requirements.

One respondent suggests that the FAA should pay for economic studies that may be required at small airports. Another opinion is that the cost of required studies has the effect of discouraging attempts to work out noise problems, especially at small airports.

The Airport Coordinating Team maintains that sound attenuation of buildings is not a complete solution to the problem, which can be resolved only by eliminating the noise or the community itself; and that demolishing a community and relocating the residents can impose "a terrible cost."

With regard to quantitative measures of benefits used in analyses pursuant to

the proposed rule, the Maryland Aviation Administration indicates its belief that "cost/benefit analysis does not easily lend itself to quantitative measures that will adequately describe the benefits of noise reduction for the public." This agency cites a lack of basis for calculating health benefits of noise control, stating that "more basic research is needed to quantify the benefits of what we are trying to correct." John W. Selmer comments that, because of the importance of background sound levels on the annoyance caused by noise, a relatively quiet area will be more dramatically impacted by overflights than other areas.

Response: The potential cost of notice has been reduced by narrowing the requirements for direct written notice to aircraft operators to include only "* * * aircraft operators providing scheduled passenger or cargo service to the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction." It is believed that this requirement will provide sufficient notice by directly notifying all affected carriers, while allowing for the notification of operators of aircraft based at an airport through means such as enclosing a notice with bills for tie-down rental. Itinerant aircraft operators that are not encompassed as operators routinely providing nonscheduled service may be provided notice through the use of publicly posted notice and the distribution of information at the time of fuel purchases.

The cost of public notice of a proposed restriction has been further reduced by approximately $10,000 by deleting the NPRM's requirement for publication in a newspaper with national circulation and in aviation trade publications. Now the rule only requires publication of notice in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area.

With regard to the cost of analyses required by the rule, it is noted that costs will be borne by the airport operator initiating a restriction or by an aircraft operator requesting a reevaluation. Analysis costs can be avoided by imposing a restriction that arises from an agreement between an airport operator and all affected aircraft operators under subpart B of the rule In addition, the final rule provides the airport or aircraft operator an opportunity to minimize the cost of analysis by allowing significant flexibility in determining the precise content of analyses. Particularly at larger airports, much of the data required for analysis may already have been developed for part 150 submissions and for financial applications. Smaller airports, which are likely to involve more moderate noise exposure, are expected to typically require simpler, less costly analyses to support proposed restrictions under subparts C and D.

The FAA recognizes the potentially large economic and social costs that can arise from either relocating communities out of airport environments or imposing severe restrictions on aircraft operations. It is believed that there are many situations in which the application of moderate restrictions on aircraft operations and/or sound insulation can achieve the most cost effective resolution of problems associated with exposure to aircraft noise. It is the intent of the FAA, in providing regulations for the resolution of problems involving aircraft noise exposure, to allow for flexibility so that a wide variety of potential solutions can be considered.

The calls for fundamental research on the effects of noise on individuals and society are noted. However, recognition of these concerns is not considered to provide a basis for modifying the proposed rule. However, the FAA has taken care to assure that the language of the final rule does not preclude the use of new techniques for analyzing noise impacts that may be developed in the future.

Scope of the Regulatory Evaluation

The notice, review, and approval procedures set forth in the final 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 final rule, it is debatable whether the economic effects of the final 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 final rule from other potential economic impacts that may be attributable to the Act. In some portions of the final rule, especially the subpart that deals with agreements between airport and aircraft operators, the 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 rule 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 noise or access restriction; it can forego all costs associated with the rule by continuing business as usual and deciding not 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 rule does not constitute a major rule.

The rule requires analysis, public notice, and a comment period for airport noise and access restrictions on Stage 2 and Stage 3 aircraft operations. 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 AIP 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 certain 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 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 in areas 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 procedures in this rule arise from mitigating some of the adverse effects of Stage 2 and Stage 3 aircraft restrictions

that would be excessive, suboptimal, or restrict competition, or 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 the question of 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 rule are expected to vary significantly among airports that will be proposing restrictions that are subject to the notice, analysis, and review requirements. Thus, the effects of compliance with the statute as implemented by this rule are treated only in a qualitative manner in this analysis.

Costs Associated With Requirements for Public Notice and Analysis

Cost of Public Notice Requirement

Airports proposing noise or access restrictions, including those that are agreed to by airport and aircraft operators and bind parties that have not signed an agreement, must publish a notice in an areawide newspaper or newspapers, post the notice at the airport, receive comments during a 45-day comment period, and to retain supporting data and comments received. In addition, direct notice of proposed restrictions is to be provided to: (1) Aircraft operators providing scheduled passenger or cargo service, operators of aircraft based at the airport, potential new entrants that are known to be interested in serving the airport, and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction; (2) the FAA; (3) governmental units with land-use jurisdiction within the airport noise study area; (4) fixed-base operators and other airport tenants whose operations may be affected; and (5) community groups and business organizations in the affected area that are known to be interested in the proposed restriction. In addition, the FAA will publish an announcement of a proposed restriction or agreement in the Federal Register. The incremental cost to an airport or aircraft operator for the required notice is estimated to vary from $4,000 to $30,000 (in the case of a complex restriction) per airport for all required notice for each application. Some airports would incur little additional cost to implement the public notice requirement, because they would have to provide 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 is estimated to cost about $1,000 in a major regional newspaper. If a notice were put in two such newspapers, publication costs per notice could range "up to about $2,000. The cost of publication of a notice of a restriction in the Federal Register by the FAA is assigned a nominal cost of $100. 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, handling public responses, and retaining records depends on the proposal's complexity and impact. The preparation of a notice for a very simple restriction with very limited impact, and the retention of supporting data and comments received, may cost $1,000 or less (several hours of professional and clerical time). In these simple cases, the total incremental notification costs, including publication in a single newspaper (if sufficient) and required direct notifications, could average $4,000 per implementation or modification thereof. However, if the restriction 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. Preparation and review costs are assumed to average $26,000. Thus, the total cost to an airport or airport operator of notice, comment, and record retention for a proposed complex restriction (exclusive of analysis cost described below) is estimated to be up to $30,000. 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 from approximately $400,000 for simple restrictions to $3.0 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 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 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 NEPA and existing regulations, i.e., they are not the result of requirements imposed under this 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 assessment 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. 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 rule.)

The rule now provides integrated instructions on the presentation of evidence regarding conditions for restriction approval and the preparation of analyses for subpart D. This clear statement, plus the integrated presentation of information, is expected to increase the likelihood that the analyses can be completed for the costs estimated above.

If 50 airports or airport operators were to prepare analyses, including

environmental assessments, solely in response to subpart D of the rule, dealing with restrictions on Stage 3 aircraft operations, the total incremental cost of analyses attributable to the rule could be as high as $15 million to $18 million over the life of the rule. (Note that an analysis is not required for agreements under subpart B.) In the event that 100 analyses were prepared in response to the rule, this cost could be as high as $30 million to $35 million. If environmental assessment costs are not included in the costs attributed to the 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, including publication of appropriate notices in the **Federal Register**, 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.

Benefits of Applying the Regulations to Proposed Restrictions on Aircraft Operations Agreements (Subpart B)

Subpart B applies to airport noise or access restrictions on Stage 3 aircraft that are agreed to by the airport operator and those aircraft operators affected by the agreement. 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 are to be included in these agreements. An analysis of such 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 provides an opportunity for those with an interest in current or future operations at an airport to become parties to an agreement. The notice requirement is intended 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 formalizes 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. The rule permits restrictions on 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 providers 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 initiate service at a particular airport. By preserving and enhancing competition, the rule may benefit air travelers by lower air fares and/or increased service.

It is also possible that agreements may have the effect of regulating rates or service. Although this is prohibited by section 105 of the Federal Aviation Act of 1958, agreement may achieve these objectives indirectly. For instance, because aircraft have varying ranges, 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 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 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 air carrier service at an airport. Remedies would be obtained under federal antitrust laws and the terms of airport development grent agreements.

Requirements for Stage 2 Restrictions (Subpart C).

Subpart C requires analysis and notice of new noise or access restrictions that are proposed for Stage 2 aircraft after October 1, 1990. These requirements also apply to amended restrictions that become effective after October 1, 1990, 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.

Benefits associated with the notice, analysis, and 180-day waiting period include assurance 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 provisions of a restriction; (5) the Federal Government and 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.

Subpart C includes requirements for an analysis of the anticipated costs and benefits of the proposed noise or 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.

Stage 2 aircraft tend to be less expensive to acquire or lease. For this reason, those aircraft have been favored by new air carriers starting operations. Restrictions on the operation of Stage 2 aircraft, therefore, may have the effect of 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. 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 not only on air carriers but on their 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 as high as the air carriers' costs for operating the delayed aircraft. The 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 Arrroval Requirements for Stage 3 Restrictions (Subpart D).

This subpart applies to airport noise or access restrictions on Stage 3 aircraft operations and amendments 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, will be subject to this 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 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 air carrier'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 result from 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 Stage 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 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 greater 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 environmental documentation, is placed on the aircraft operator that initiates the request for reevaluation. These costs are less than those for airport operators that propose restrictions under subpart D, above, because reevaluation applicants only need to provide proof regarding at least one of the six statutory conditions. Applicants under subpart D must provide proof regarding all six of the statutory conditions. 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. This 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.

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 these 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 rule unless it believed that the benefits would be well in excess of the costs of complying with the rule. The rule allows an airport operator that proposes restrictions on Stage 2 aircraft substantial latitude in determining the components of the associated analysis. Further, and more important, it is believed to be unlikely that a "substantial number of small entities"—one third of the operators of 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.

Trade Impact Assessment

The costs that may be incurred as a result of implementing the rule 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 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."

These regulations 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 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 regulation is not major under Executive order 12291. In addition, this rule 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 rule is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A Regulatory Evaluation of the rule, 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

Administrative practice and procedure, Air carriers, Aircraft, Airports, Noise control, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration adds a new part 161 to title 14, chapter I, subchapter I of the Federal Aviation Regulations (14 CFR part 161) to read as follows:

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

Subpart A—General Provisions

Sec.

Sec.

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

Subpart A—General Provisions

§ 161.1 Purpose.

This part implements the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2153, 2154, 2155, and 2156). It prescribes:

(a) Notice requirements and procedures for airport operators implementing Stage 3 aircraft noise and access restrictions pursuant to agreements between airport operators and aircraft operators;

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

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

(d) Procedures for Federal Aviation Administration reevaluation of agreements containing restrictions on Stage 3 aircraft operations and of aircraft noise and access restrictions affecting Stage 3 aircraft operations imposed by airport operators.

§ 161.3 Applicability.

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

(b) This part also applies to airports enacting amendments to airport noise and access restrictions in effect on October 1, 1990, but amended after that date, where the amendment reduces or limits aircraft operations or affects aircraft safety.

(c) The notice, review, and approval requirements set forth in this part apply to all airports imposing 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 document in writing signed by the airport operator; those aircraft operators currently operating at the airport that would be affected by the noise or access restriction; and all affected new entrants planning to provide new air service within 180 days of the effective date of the restriction that have submitted to the airport operator a plan of operations and notice of agreement to the restriction.

Aircraft operator, for purposes of this part, means any owner of an aircraft that operates the aircraft, i.e., uses, causes to use, or authorizes the use of the aircraft; or in the case of a leased aircraft, any lessee that operates the aircraft pursuant to a lease. As used in this part, aircraft operator also means any representative of the aircraft owner, or in the case of a leased aircraft, any representative of the lessee empowered to enter into agreements with the airport operator regarding use of the airport by an aircraft.

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 noise contour selected by the applicant for study and must include the noise contours required to be developed for noise exposure maps specified in 14 CFR part 150.

Airport operator means the airport proprietor.

Aviation user class means the following categories of aircraft operators: air carriers operating under parts 121 or 129 of this chapter; commuters and other carriers operating under parts 127 and 135 of this chapter; 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, as defined in 14 CFR part 150. (The scientific notation for DNL is L_{dn}).

Noise or access restrictions means restrictions (including but not limited to provisions of ordinances and leases) affecting access or noise that affect the operations of Stage 2 or Stage 3 aircraft, such as limits on the 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 effect of controlling airport noise. This definition does not include peak-period pricing programs where the 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) Aircraft operational procedures that must be submitted for adoption by the FAA, such as preferential runway use, noise abatement approach and departure procedures and profiles, and flight tracks, are not subject to this part. Other noise abatement procedures, such as taxiing and engine runups, are not subject to this part unless the procedures imposed limit the total number of Stage 2 or Stage 3 aircraft operations, or limit the hours of Stage 2 or Stage 3 aircraft operations, at the airport.

(b) The notice, review, and approval requirements set forth in this part do not apply to airports with restrictions as specified in 49 U.S.C. App. 2153(a)(2)(C):

(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 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 (b)(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 of this part with respect to restrictions on Stage 3 aircraft operations 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 description methods.

For purposes of this part, the following requirements apply:

(a) The sound level at an airport and surrounding areas, and the exposure of individuals to noise resulting from operations at an airport, must be established in accordance with the specifications and methods prescribed under appendix A of 14 CFR part 150; and

(b) 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—Agreements

§ 161.101 Scope.

(a) This subpart applies to an airport operator's noise or access restriction on the operation of Stage 3 aircraft that is implemented pursuant to an agreement between an airport operator and all aircraft operators affected by the proposed restriction that are serving or will be serving such airport within 180 days of the date of the proposed restriction.

(b) For purposes of this subpart, an agreement shall be in writing and signed by:

(1) The airport operator;

(2) Those aircraft operators currently operating at the airport who would be affected by the noise or access restriction; and

(3) All new entrants that have submitted the information required under § 161.105(a) of this part.

(c) This subpart does not apply to restrictions exempted in § 161.7 of this part.

(d) This subpart does not limit the right of an airport operator to enter into an agreement with one or more aircraft operators that restricts the operation of Stage 2 or Stage 3 aircraft as long as the restriction is not enforced against aircraft operators that are not party to the agreement. Such an agreement is not covered by this subpart except that an aircraft operator may apply for sanctions pursuant to subpart F of this part for restrictions the airport operator seeks to impose other than those in the agreement.

§ 161.103 Notice of the proposed restriction.

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

(b) In order to establish a restriction in accordance with this subpart, the airport operator shall, at least 45 days before implementing the restriction, publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation

throughout the airport vicinity or airport noise study area, if one has been delineated: post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; affected operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing non-scheduled service;

(2) The Federal Aviation Administration;

(3) Each Federal, state, and local agency with land use control jurisdiction within the vicinity of the airport, or the airport noise study area, if one has been delineated;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each direct notice 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 sanctions for noncompliance and a statement that it will be implemented pursuant to a signed agreement;

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

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

(5) The proposed effective date of the restriction and any proposed enforcement mechanism;

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

(7) Information on how to request copies of the restriction portion of the agreement, including any sanctions for noncompliance;

(8) A notice to potential new entrant aircraft operators that are known to be interested in serving the airport of the requirements set forth in § 161.105 of this part; and

(9) Information on how to submit a new entrant application, comments, and the address for submitting applications and comments to the airport operator, including identification of a contact person at the airport.

(d) The Federal Aviation Administration will publish an announcement of the proposed restriction in the Federal Register.

§ 161.105 Requirements for new entrants.

(a) Within 45 days of the publication of the notice of a proposed restriction by the airport operator under § 161.103(b) of this part, any person intending to provide new air service to the airport within 180 days of the proposed date of implementation of the restriction (as evidenced by submission of a plan of operations to the airport operator) must notify the airport operator if it would be affected by the restriction contained in the proposed agreement, and either that it—

(1) Agrees to the restriction; or

(2) Objects to the restriction.

(b) Failure of any person described in § 161.105(a) of this part to notify the airport operator that it objects to the proposed restriction will constitute waiver of the right to claim that it did not consent to the agreement and render that person ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years following the effective date of the restriction. The signature of such a person need not be obtained by the airport operator in order to comply with § 161.107(a) of this part.

(c) All other new entrants are also ineligible to use lack of signature as ground to apply for sanctions under subpart F of this part for two years.

§ 161.107 Implementation of the restriction.

(a) To be eligible to implement a Stage 3 noise or access restriction under this subpart, an airport operator shall have the restriction contained in an agreement as defined in § 161.101(b) of this part.

(b) An airport operator may not implement a restriction pursuant to an agreement until the notice and comment requirements of § 161.103 of this part have been met.

(c) Each airport operator must notify the Federal Aviation Administration of the implementation of a restriction pursuant to an agreement and must include in the notice evidence of compliance with § 161.103 and a copy of the signed agreement.

§ 161.109 Notice of termination of restriction pursuant to an agreement.

An airport operator must notify the FAA within 10 days of the date of termination of a restriction pursuant to an agreement under this subpart.

§ 161.111 Availability of data and comments on a restriction implemented pursuant to an agreement.

The airport operator shall retain all relevant supporting data and all comments relating to a restriction implemented pursuant to an agreement for as long as the restriction is in effect. The airport operator shall make these materials available for inspection upon request by the FAA. The information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

§ 161.113 Effect of agreements; limitation on reevaluation.

(a) Except as otherwise provided in this subpart, a restriction implemented by an airport operator pursuant to this subpart shall have the same force and effect as if it had been a restriction implemented in accordance with subpart D of this part.

(b) A restriction implemented by an airport operator pursuant to this subpart may be subject to reevaluation by the FAA under subpart E of this part.

Subpart C—Notice Requirements for Stage 2 Restrictions

§ 161.201 Scope.

(a) This subpart applies to:

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

(2) An airport imposing an amendment to a Stage 2 restriction, if the amendment is proposed after October 1, 1990, and reduces or limits Stage 2 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 2 restriction specifically exempted in § 161.7 or a Stage 2 restriction contained in an agreement as long as the restriction is not enforced against aircraft operators that are not parties to the agreement.

§ 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, prepared in accordance with § 161.205, and a public notice and opportunity for comment as prescribed in this subpart. The notice and analysis required by this subpart shall be completed at least 180 days prior to the effective date of the restriction.

(b) Except as provided in § 161.211, an airport operator must publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport

users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each Federal, state, and local agency with land-use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice 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 where the complete text of the restriction, and any 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 operators and the types of aircraft expected to be affected;

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

(6) An analysis of the proposed restriction, as required by § 161.205 of this subpart, or an announcement of where the analysis is available for public inspection;

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

(8) Information on how to request copies of the complete text of the proposed restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator, including identification of a contact person at the airport.

(d) At the time of notice, the airport operator shall provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance.

(e) The Federal Aviation Administration will publish an announcement of the proposed Stage 2 restriction in the **Federal Register**.

§ 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; shall use currently accepted economic methodology; and shall provide separate detail on the costs and benefits of the proposed restriction with respect to the operations of Stage 2 aircraft weighing less than 75,000 pounds if the restriction applies to this class. 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.

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

§ 161.209 Requirements for proposal changes.

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

(b) If there are substantial changes to the proposed restriction or the analysis during the 180-day notice period, the airport operator shall initiate new notice following the procedures in § 161.203 or, alternatively, the procedures in § 161.211. A substantial change includes, but is not limited to, a proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.203(c), new notice 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.

(a) An airport operator may use the procedures in part 150 of this chapter, instead of the procedures described in §§ 161.203(b) and 161.209(b), as a means of providing an adequate public notice and comment opportunity on a proposed Stage 2 restriction.

(b) If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.203(b) are notified that the airport's 14 CFR part 150 program will include a proposed Stage 2 restriction under part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR part 150 program;

(2) Provide the FAA with a full text of the proposed restriction, including any sanctions for noncompliance, at the time of the notice;

(3) Include the information in § 161.203 (c)(2) through (c)(5) and 161.205 in the analysis of the proposed restriction for the part 14 CFR part 150 program;

(4) Wait 180 days following the availability of the above analysis for review by the consulted parties and compliance with the above notice requirements before implementing the Stage 2 restriction; and

(5) Include in its 14 CFR part 150 submission to the FAA evidence of compliance with paragraphs (b)(1) and (b)(4) of this section, and the analysis in paragraph (b)(3) of this section, together with a clear identification that the 14 CFR part 150 program includes a

proposed Stage 2 restriction under part 161.

(c) The FAA determination on the 14 CFR part 150 submission does not constitute approval or disapproval of the proposed Stage 2 restriction under part 161.

(d) An amendment of a restriction may also be processed under 14 CFR part 150 procedures in accordance with this section.

§ 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 § 161.209(a).

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

§ 161.301 Scope.

(a) This subpart applies to:

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

(2) An airport imposing an amendment to a Stage 3 restriction, if the amendment becomes effective after October 1, 1990, and reduces or limits Stage 3 aircraft operations (compared to the restriction that it amends) or affects aircraft safety.

(b) This subpart does not apply to an airport imposing a Stage 3 restriction specifically exempted in § 161.7, or an agreement complying 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 § 161.321, an applicant shall publish a notice of the proposed restriction in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area; post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) Aircraft operators providing scheduled passenger or cargo service at the airport; operators of aircraft based at the airport; potential new entrants that are known to be interested in serving the airport; and aircraft operators known to be routinely providing nonscheduled service that may be affected by the proposed restriction;

(2) The Federal Aviation Administration;

(3) Each Federal, state, and local agency with land-use control jurisdiction within the airport noise study area;

(4) Fixed-base operators and other airport tenants whose operations may be affected by the proposed restriction; and

(5) Community groups and business organizations that are known to be interested in the proposed restriction.

(c) Each notice 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 (and any alternatives, in order of preference), including a statement that it will be a mandatory Stage 3 restriction; and where the complete text of the restriction, and any 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 operators and types of aircraft expected to be affected;

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

(6) An analysis of the proposed restriction, in accordance with § 161.305 of this part, or an announcement regarding where the analysis is available for public inspection;

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

(8) Information on how to request a copy of the complete text of the restriction, including any sanctions for noncompliance, and the analysis (if not included with the notice); and

(9) The address for submitting comments to the airport operator or aircraft operator proposing the restriction, including identification of a contact person.

(d) Applicants may propose alternative restrictions, including partial implementation of any proposal, and indicate an order of preference. If alternative restriction proposals are submitted, the requirements listed in paragraphs (c)(2) through (c)(6) of this section should address the alternative proposals where appropriate.

§ 161.305 Required analysis and conditions for approval of proposed restrictions.

Each applicant proposing a noise or access restriction on Stage 3 operations shall prepare and make available for public comment an analysis that supports, by substantial evidence, that the six statutory conditions for approval have been met for each restriction and any alternatives submitted. The statutory conditions are set forth in 49 U.S.C. App. 2153(d)(2) and paragraph (e) of this section. Any proposed restriction (including alternatives) on Stage 3 aircraft operations that also affects the operation of Stage 2 aircraft must include analysis of the proposals in a manner that permits the proposal to be understood in its entirety. (Nothing in this section is intended to add a requirement for the issuance of restrictions on Stage 2 aircraft to those of subpart C of this part.) The applicant shall provide:

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

(b) Maps denoting the airport geographic boundary, and the geographic boundaries and names of each jurisdiction that controls land use within the airport noise study area;

(c) An adequate environmental assessment of the proposed restriction or adequate information supporting a categorical exclusion in accordance with FAA orders and procedures regarding compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321);

(d) A summary of the evidence in the submission supporting the six statutory conditions for approval; and

(e) An analysis of the restriction, demonstrating by substantial evidence that the statutory conditions are met. The analysis must:

(1) Be sufficiently detailed to allow the FAA to evaluate the merits of the proposed restriction; and

(2) Contain the following essential elements needed to provide substantial evidence supporting each condition for approval:

(i) *Condition 1: The restriction is reasonable, nonarbitrary, and*

nondiscriminatory. (A) Essential information needed to demonstrate this condition includes the following:

(*1*) Evidence that a current or projected noise or access problem exists, and that the proposed action(s) could relieve the problem, including:

(*i*) A detailed description of the problem precipitating the proposed restriction with relevant background information on factors contributing to the proposal and any court-ordered action or estimated liability concerns; 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 and measures carried out in response to 14 CFR part 150; and actions taken to comply with grant assurances requiring that:

(*A*) 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

(*B*) The sponsor give fair consideration to the interests of communities in or near where the project may be located; 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 purposes compatible with normal airport operations; and 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.

(*ii*) 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 impact with and without the proposed restriction including:

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

(*B*) The number of people and the noncompatible land uses within the airport noise study area with and without the proposed restriction for each year the noise restriction is analyzed;

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

(*D*) Data on current and projected airport activity that would exist in the absence of the proposed restriction.

(*2*) Evidence that other available remedies are infeasible or would be less cost-effective, including descriptions of any alternative aircraft restrictions that have been considered and rejected, and the reasons for the rejection; and of 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.

(*3*) Evidence that the noise or access standards are the same for all aviation user classes or that the differences are justified, such as:

(*i*) A description of the relationship of the effect of the proposed restriction on airport users (by aviation user class); and

(*ii*) The noise attributable to these users in the absence of the proposed restriction.

(B) At the applicant's discretion, information may also be submitted as follows:

(*1*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section (Condition 2) that there is a reasonable chance that expected benefits will equal or exceed expected cost; for example, comparative economic analyses of the costs and benefits of the proposed restriction and aircraft and nonaircraft alternative measures. For detailed elements of analysis, see paragraph (e)(2)(ii)(A) of this section.

(*2*) Evidence not submitted under paragraph (e)(2)(ii)(A) of this section 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.

(ii) *Condition 2: The restriction does not create an undue burden on interstate or foreign commerce.* (A) Essential information needed to demonstrate this statutory condition includes:

(*1*) Evidence, based on a cost-benefit analysis, that the estimated potential benefits of the restriction have a reasonable chance to exceed the estimated potential cost of the adverse effects on interstate and foreign commerce. In preparing the economic analysis required by this section, the applicant shall use currently accepted economic methodology, specify the methods used and assumptions underlying the analysis, and consider:

(*i*) The effect of the proposed restriction on operations of aircraft by aviation user class (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.

(*ii*) The estimated costs of the proposed restriction and alternative nonaircraft restrictions including the following, as appropriate:

(*A*) Any additional cost of continuing aircraft operations under the restriction, including reasonably available information concerning any net capital costs of acquiring or retrofitting aircraft (net of salvage value and operating efficiencies) by aviation user class; and any incremental recurring costs;

(*B*) Costs associated with altered or discontinued aircraft operations, such as reasonably available information concerning loss to carriers of operating profits; decreases in passenger and shipper consumer surplus by aviation user class; loss in profits associated with other airport services or other entities: and/or any significant economic effect on parties other than aviation users.

(*C*) Costs associated with implementing nonaircraft restrictions or nonaircraft components of restrictions, such as reasonably available information concerning estimates of capital costs for real property, including redevelopment, soundproofing, noise easements, and purchase of property interests; and estimates of associated incremental recurring costs; or an explanation of the legal or other impediments to implementing such restrictions.

(*D*) Estimated benefits of the proposed restriction and alternative restrictions that consider, as appropriate, anticipated increase in real estate values and future construction cost (such as sound insulation) savings; anticipated increase in airport revenues; quantification of the noise benefits, such as number of people removed from noise contours and improved work force and/or educational productivity, if any; valuation of positive safety effects, if any; and/or other qualitative benefits, including improvements in quality of life.

(B) At the applicant's discretion, information may also be submitted as follows:

(*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.

(*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 that comparable services or facilities are available at another airport controlled by the airport operator in the market area, including services available at other airports.

(4) Evidence that alternative transportation service can be attained through other means of transportation.

(5) Information on the absence of adverse evidence or adverse comments with respect to undue burden in the notice process required in § 161.303, or alternatively in § 161.321, of this part as evidence that there is no undue burden.

(iii) *Condition 3: The proposed restriction maintains safe and efficient use of the navigable airspace.* Essential information needed to demonstrate this statutory condition includes evidence that the proposed restriction maintains safe and efficient use of the navigable airspace based upon:

(A) Identification of airspace and obstacles to navigation in the vicinity of the airport; and

(B) An analysis of the effects of the proposed restriction with respect to use of airspace in the vicinity of the airport, substantiating that the restriction maintains or enhances safe and efficient use of the navigable airspace. The analysis shall include a description of the methods and data used.

(iv) *Condition 4: The proposed restriction does not conflict with any existing Federal statute or regulation.* Essential information needed to demonstrate this condition includes evidence demonstrating that no conflict is presented between the proposed restriction and any existing Federal statute or regulation, including those governing:

(A) Exclusive rights;

(B) Control of aircraft operations; and

(C) Existing Federal grant agreements.

(v) *Condition 5: The applicant has provided adequate opportunity for public comment on the proposed restriction.* Essential information needed to demonstrate this condition includes evidence that there has been adequate opportunity for public comment on the restriction as specified in § 161.303 or § 161.321 of this part.

(vi) *Condition 6: The proposed restriction does not create an undue burden on the national aviation system.* Essential information needed to demonstrate this condition includes evidence that the proposed restriction does not create an undue burden on the national aviation system such as:

(A) An analysis demonstrating that the proposed restriction does not have a substantial adverse effect on existing or planned airport system capacity, on observed or forecast airport system congestion and aircraft delay, and on airspace system capacity or workload;

(B) An analysis demonstrating that nonaircraft alternative measures to achieve the same goals as the proposed subject restrictions are inappropriate;

(C) The absence of comments with respect to imposition of an undue burden on the national aviation system in response to the notice required in § 161.303 or § 161.321.

§ 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 for inspection by interested parties upon request. Comments must be retained as long as the restriction is in effect.

(b) Each applicant shall submit to the FAA a summary of any comments received. Upon request by the FAA, the applicant shall submit copies of the comments.

§ 161.309 Requirements for proposal changes.

(a) Each applicant shall promptly advise interested parties of any changes to a proposed restriction or alternative restriction that are not encompassed in the proposals submitted, including changes that affect noncompatible land uses or that take place before the effective date of the restriction, and make available these changes to the proposed restriction and its analysis. For the purpose of this paragraph, interested parties include those who received direct notice under § 161.303(b) of this part, or those who were required to be consulted in accordance with the procedures in § 161.321 of this part, and those who commented on the proposed restriction.

(b) If there are substantial changes to a proposed restriction or the analysis made available prior to the effective date of the restriction, the applicant proposing the restriction shall initiate new notice in accordance with the procedures in § 161.303 or, alternatively, the procedures in § 161.321. These requirements apply to substantial changes that are not encompassed in submitted alternative restriction proposals and their analyses. A substantial change to a restriction includes, but is not limited to, any proposal that would increase the burden on any aviation user class.

(c) In addition to the information in § 161.303(c), a new notice 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.

(d) If substantial changes requiring a new notice 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 180-day 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 for each restriction and alternative restriction submitted, with a request that the FAA review and approve the proposed Stage 3 noise or access restriction:

(a) A summary of evidence of the fulfillment of conditions for approval, as specified in § 161.305;

(b) An analysis as specified in § 161.305, as appropriate to the proposed restriction;

(c) 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; and

(d) A statement as to whether the airport requests, in the event of disapproval of the proposed restriction or any alternatives, that the FAA approve any portion of the restriction or any alternative that meets the statutory requirements for approval. An applicant requesting partial approval of any proposal should indicate its priorities as to portions of the proposal to be approved.

§ 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. Determinations of completeness will be made on all proposed restrictions and alternatives. This completeness determination is not an approval or disapproval of the proposed restriction.

(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 applicant that it intends to act on the proposed restriction and publishes notice of the proposed restriction in the Federal Register in accordance with § 161.315. The 180-day period for approving or disapproving the proposed restriction

will start on the date of original FAA receipt of the application.

(2) Following review of the application, public comments, and any other information obtained under § 161.317(b), the FAA will issue a decision approving or disapproving the proposed restriction. This decision is a final decision of the Administrator for purpose of judicial review.

(c) *Process for incomplete application.* If the FAA determines that an application is not complete with respect to any submitted restriction or alternative restriction, the following procedures apply:

(1) The FAA shall notify the applicant in writing, 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 notice, the applicant shall advise the FAA in writing 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/or 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. The 180-day review period starts on the date of receipt of the last supplement to the application.

(iii) If the application is still not complete with respect to the proposed restriction or at least one submitted alternative, 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 documentation (either an environmental assessment or information supporting a categorical exclusion) is incomplete, the FAA will so notify the applicant in writing, returning the application and setting forth the types of information and analysis needed to complete the documentation. The FAA will continue to return an application until adequate environmental documentation is provided. When the application is determined to be complete, including the environmental documentation, 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 § 161.317(b), 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) The FAA will deny the application and return it to the applicant if:

(i) None of the proposals submitted are found to be complete;

(ii) The application has been returned twice to the applicant for reasons other than completion of the environmental documentation; and

(iii) The applicant declines to complete the application. This closes the matter without prejudice to later application, and does not constitute disapproval of the proposed restriction.

§ 161.315 Receipt of complete application.

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

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

§ 161.317 Approval or disapproval of proposed restriction.

(a) Upon determination that an application is complete with respect to at least one of the proposals submitted by the applicant, the FAA will act upon the complete proposals in the application. The FAA will not act on any proposal for which the applicant has declined to submit additional necessary information.

(b) The FAA will review the applicant's proposals in the preference order specified by the applicant. The FAA may request additional information from aircraft operators, or any other party, and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will evaluate the proposal and issue an order approving or disapproving the proposed restriction and any submitted alternatives, in whole or in part, in the order of preference indicated by the applicant. Once the FAA approves a proposed restriction, the FAA will not consider any proposals of lower applicant-stated preference. Approval or disapproval will be given by the FAA within 180 days after receipt of the application or last supplement thereto under § 161.313. The FAA will publish its decision in the **Federal Register** and notify the applicant in writing.

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

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

(f) An order approving a restriction may be subject to requirements that the applicant:

(1) Comply with factual representations and commitments 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 documentation provided in support of the restriction are implemented.

§ 161.319 Withdrawal or revision of restriction.

(a) The applicant may withdraw or revise a proposed restriction at any time prior to FAA 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 in the **Federal Register** that it has terminated its review without prejudice to resubmission. A resubmission will be considered a new application.

(b) A subsequent amendment to a Stage 3 restriction that was in effect after October 1, 1990, 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. The applicant may, at its option, revise or amend a restriction previously disapproved by the FAA and resubmit it for approval. Amendments are subject to the same requirements and procedures as initial submissions.

§ 161.321 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 §§ 161.303(b) and 161.309(b) of this part, as a means of providing an adequate public notice and opportunity to

comment on proposed Stage 3 restrictions, including submitted alternatives.

(b) If the airport operator elects to use 14 CFR part 150 procedures to comply with this subpart, the operator shall:

(1) Ensure that all parties identified for direct notice under § 161.303(b) are notified that the airport's 14 CFR part 150 program submission will include a proposed Stage 3 restriction under part 161, and that these parties are offered the opportunity to participate as consulted parties during the development of the 14 CFR part 150 program;

(2) Include the information required in § 161.303(c) (2) through (5) and § 161.305 in the analysis of the proposed restriction in the 14 CFR part 150 program submission; and

(3) Include in its 14 CFR part 150 submission to the FAA evidence of compliance with the notice requirements in paragraph (b)(1) of this section and include the information required for a part 161 application in § 161.311, together with a clear identification that the 14 CFR part 150 submission includes a proposed Stage 3 restriction for FAA review and approval under §§ 161.313, 161.315, and 161.317.

(c) The FAA will evaluate the proposed part 161 restriction on Stage 3 aircraft operations included in the 14 CFR part 150 submission in accordance with the procedures and standards of this part, and will review the total 14 CFR part 150 submission in accordance with the procedures and standards of 14 CFR part 150.

(d) An amendment of a restriction, as specified in § 161.319(b) of this part, may also be processed under 14 CFR part 150 procedures.

§ 161.323 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 § 161.309(a) of this part.

§ 161.325 Availability of data and comments on an implemented restriction.

The applicant shall retain all relevant supporting data and all comments relating to an approved restriction for as long as the restriction is in effect and shall make these materials available for inspection upon request by the FAA. This information shall be made available for inspection by any person during the pendency of any petition for reevaluation found justified by the FAA.

Subpart E—Reevaluation of Stage 3 Restrictions

§ 161.401 Scope.

This subpart applies to an airport imposing a noise or access restriction on the operation of Stage 3 aircraft that first became effective after October 1, 1990, and had either been agreed to in compliance with the procedures in Subpart B of this part or approved by the FAA in accordance with the procedures in subpart D of this part. This subpart does not apply to Stage 2 restrictions imposed by airports. This subpart does not apply to Stage 3 restrictions specifically exempted in § 161.7.

§ 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 § 161.305 is therefore justified.

(1) A change in the noise environment sufficient to justify reevaluation is either a DNL change of 1.5 dB or greater (from the restriction's anticipated target noise level result) over noncompatible land uses, or a change of 17 percent or greater in the noncompatible land uses, within an airport noise study area. For approved restrictions, calculation of change shall be based on the divergence of actual noise impact of the restriction from the estimated noise impact of the restriction predicted in the analysis required in § 161.305(e)(2)(i)(A)(*1*)(*ii*). 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 not meeting one or more of the conditions for approval set forth in § 161.305 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 normally 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 locally any dispute over a restriction with the affected parties, including the airport operator, before requestng 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 and any sanctions for noncompliance, whether the restriction was approved by the FAA or agreed to by the airport operator and aircraft operators, the date of the approval or agreement, and a copy of the restriction as incorporated in a local ordinance, airport rule, lease, or other document;

(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 § 161.305;

(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 additional information from the airport operator or any other party and may convene an informal meeting to gather facts relevant to its determination.

(c) The FAA will notify the aircraft operator in writing, 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 desiring continuation of the reevaluation process shall publish a notice of request for reevaluation in an areawide newspaper or newspapers that either singly or together has general circulation throughout the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated); post a notice in the airport in a prominent location accessible to airport users and the public; and directly notify in writing the following parties:

(1) The airport operator, other aircraft operators providing scheduled passenger or cargo service at the airport, operators of aircraft based at the airport, potential new entrants that are known to be interested in serving the airport, and aircraft operators known to be routinely providing nonscheduled service;

(2) The Federal Aviation Administration;

(3) Each Federal, State, and local agency with land-use control jurisdiction within the airport noise study area (or the airport vicinity for agreements where an airport noise study area has not been delineated);

(4) Fixed-base operators and other airport tenants whose operations may be affected by the agreement or the restriction;

(5) Community groups and business organizations that are known to be interested in the restriction; and

(6) Any other party that commented on the original restriction.

(b) Each notice provided in accordance with paragraph (a) of this section 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 operator 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 prepared in accordance with § 161.409 of this part supporting the aircraft operator's reevaluation request, or an announcement of where the analysis is available for public inspection;

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

(7) Information on how to request a copy of the analysis (if not in the notice); and

(8) The address for submitting comments to the aircraft operator, including identification 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, lease, 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 § 161.305; and

(5) Sufficient data and analysis selected from § 161.305, as applicable to the restriction at issue, to support the contention made in paragraph (b)(4) of this section. This is to include either an adequate environmental assessment of the impacts of discontinuing all or part of a restriction in accordance with the aircraft operator's petition, or adequate information supporting a categorical exclusion under FAA orders implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

(c) The amount of analysis may vary with the complexity of the restriction, the number and nature of the conditions in § 161.305 that are alleged to be unsupported, and the amount of previous analysis developed in support of the restriction. The aircraft operator may incorporate analysis previously developed in support of the restriction, including previous environmental documentation to the extent applicable. The applicant is responsible for providing substantial evidence, as described in § 161.305, that one or more of the conditions are not supported.

§ 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 for inspection to interested parties specified in paragraph (b) of this section upon request. Comments must be retained for two years.

(b) Each aircraft operator shall promptly notify interested parties if it makes a substantial change in its analysis that affects either the costs or benefits analyzed, or the criteria in § 161.305, differently from the analysis made available for comment in accordance with § 161.407. Interested parties include those who received direct notice under paragraph (a) of § 161.407 and those who have commented on the reevaluation. If an aircraft operator revises its analysis, it shall make the 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.

§ 161.413 Reevaluation procedure.

(a) Each aircraft operator requesting a reevaluation shall submit to the FAA:

(1) The analysis described in § 161.409;

(2) 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; and

(3) 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. No further action will be taken by the FAA until a complete submission is received.

(c) The FAA will review all submitted documentation and comments pursuant to the conditions of § 161.305. To the extent necessary, the FAA may request additional information from the aircraft operator, airport operator, and others known to have information material to the reevaluation, and may convene an

informal meeting to gather 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 § 161.305 of this part.

(b) If the FAA's reevaluation 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 to the extent necessary to bring the restriction into compliance with this part or, with respect to a restriction agreed to 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 all or part of a previous approval made under subpart D of this part, the relevant portion of 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 § 161.305. Restrictions in 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.

(a) This subpart describes the procedures to terminate eligibility for airport grant funds and authority to impose or collect passenger facility charges for an airport operator's failure to comply with the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2151 *et seq.*) or this part. These procedures may be used with or in addition to any judicial proceedings initiated by the FAA to protect the national aviation system and related Federal interests.

(b) Under no conditions shall any airport operator 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 if the FAA determines that the airport is imposing any noise or access restriction not in compliance with the Airport Noise and Capacity Act of 1990 or this part. Recission of, or a commitment in writing signed by an authorized official of the airport operator to rescind or permanently not enforce, a noncomplying restriction will be treated by the FAA as action restoring compliance with the Airport Noise and Capacity Act of 1990 or this part with respect to that restriction.

§ 161.503 Informal resolution; notice of apparent violation.

Prior to the initiation of formal action to terminate eligibility for airport grant funds or authority to impose or collect passenger facility charges under this subpart, the FAA shall undertake informal resolution with the airport operator to assure compliance with the Airport Noise and Capacity Act of 1990 or this part upon receipt of a complaint or other evidence that an airport operator has taken action to impose a noise or access restriction that appears to be in violation. This shall not preclude a FAA application for expedited judicial action for other than termination of airport grants and passenger facility charges to protect the national aviation system and violated federal interests. If informal resolution is not successful, the FAA will notify the airport operator in writing of the apparent violation. The airport operator shall respond to the notice in writing not later than 20 days after receipt of the notice, and also state whether the airport operator will agree to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

§ 161.505 Notice of proposed termination of airport grant funds and passenger facility charges.

(a) The FAA begins proceedings under this section to terminate an airport operator's eligibility for airport grant funds and authority to impose or collect passenger facility charges only if the FAA determines that informal resolution is not successful.

(b) The following procedures shall apply if an airport operator agrees in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of a noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the **Federal Register.** This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 60 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. The FAA will consult with the airport operator to attempt resolution and may request additional information from other parties to determine compliance. The review and consultation process shall take not less than 30 days. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the **Federal Register.**

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the FAA will notify the airport operator in writing of such determination. Where appropriate, the FAA may prescribe corrective action, including corrective action the airport operator may still need to take. Within 10 days of receipt of the FAA's determination, the airport operator shall—

(i) Advise the FAA in writing that it will complete any corrective action prescribed by the FAA within 30 days; or

(ii) Provide the FAA with a list of the domestic air carriers and foreign air carriers operating at the airport and all other issuing carriers, as defined in § 158.3 of this chapter, that have remitted passenger facility charge revenue to the airport in the preceding 12 months.

(4) If the FAA finds that the airport operator has taken satisfactory corrective action, the FAA will notify the airport operator in writing and publish notice of compliance in the **Federal Register.** If the FAA has determined that the airport operator has imposed a noise or access restriction in

violation of the Airport Noise and Capacity Act of 1990 or this part and satisfactory corrective action has not been taken, the FAA will issue an order that—

(i) Terminates eligibility for new airport grant agreements and discontinues payments of airport grant funds, including payments of costs incurred prior to the notice; and

(ii) Terminates authority to impose or collect a passenger facility charge or, if the airport operator has not received approval to impose a passenger facility charge, advises the airport operator that future applications for such approval will be denied in accordance with § 158.29(a)(1)(v) of this chapter.

(5) The FAA will publish notice of the order in the **Federal Register** and notify air carriers of the FAA's order and actions to be taken to terminate or modify collection of passenger facility charges in accordance with § 158.65(f) of this chapter.

(c) The following procedures shall apply if an airport operator does not agree in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the **Federal Register**. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 30 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the **Federal Register**.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the procedures in paragraphs (b)(3) through (b)(5) of this section will be followed.

Issued in Washington, DC on September 19, 1991.

James B. Busey,

Administrator.

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