Part 161
Notice and Approval of Airport Noise and Access Restrictions

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SUPPLEMENTARY INFORMATION:

Background

On February 25, 1991, the FAA issued Notice of Proposed Rulemaking (NPRM) Notice No. 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.

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 encouraged 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.

with the national 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 considered 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 cumulative effect, 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

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

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 specific kinds of Stage 3 restrictions listed in the Act. The definition of ''noise'' and ''access'' restrictions in the proposed rule also extended

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.

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

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?

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= 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

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 of all 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 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

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.

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

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.

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

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 65dB 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 a 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

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

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

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

the general purpose of this part.

§ 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 restric-

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.

§ 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.

§ 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

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.

Responses: 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.

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.

§ 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 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 restriction. 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

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 discussed 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.

§ 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.

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.

§ 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.

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.

§ 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.

§ 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.

§ 161.113 Effect of agreements; limitation on reevaluation restrictions.

A new section has been added to the rule to clarify that a restriction implemented pursuant 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

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 the operation of Stage 2 aircraft. Airport operators are not required to obtain approval by the FAA of a restriction imposed on Stage 2 aircraft operations. However, the Act 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.

§ 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.

§ 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 the 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.

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 requirements 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

information requirements are minimal and necessary so that interested parties are able to fully understand the proposed restriction.

§ 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.

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 systems 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.

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.0.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.

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.

§ 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

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.

§ 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

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.

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.

§ 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

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.

§ 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 findings, 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,

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 Jose, 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.

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 case 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.

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

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.

§ 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 a 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.

§ 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

§ 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.

§ 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."

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.

§ 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 proposals, 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.

§ 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.

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.

§ 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.

§ 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 significant 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.

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 regarding 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.

§ 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 sufficiently 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.

§ 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

in the noise environment to trigger reevaluation, but the National Airport Watch Group 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 analysis 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 reevaluation 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.

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 a 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.

§ 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 agreement 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.

§ 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

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.

§ 161.413 Reevaluation 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.

Comment: 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.

§ 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 ease 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

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 under 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.

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's 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 section 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.

§ 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.

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 *Federal Register* and invite public comment on the notice. Following a review of all comments, the FAA would issue a final determination regarding compliance with part 161 and the Act. If the FAA determined that the airport operator imposed a non-complying 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 defer 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 the 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

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 accomplished 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

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 environmental 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

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 judgement 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

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

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.

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

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 the 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

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

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, agreements 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

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 Approval 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

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 a result of less convenient schedules for passengers for whom the airport is an origin or destination and more waiting time if the airport is a hub at which passengers transfer between airplanes. As with Stage 2 aircraft, simultaneous restrictions on Stage 3 aircraft at a number of airports can have significantly greater adverse impacts on both aircraft operators and passengers than would restrictions at a single airport. The greater public and Federal examination of proposed restrictions on Stage 3 aircraft (as compared to Stage 2) is justified, in large part, by the greater potential for imposing costs on the national aviation system that do not have equal or 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

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

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."

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) effective September 25, 1991. The authority citation for Part 161 reads as follows:

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

§ 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.

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.

(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 restric-

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

CFR part 150; and

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 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

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.

§ 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.

(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;

tions 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.

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 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 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,

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

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

(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) 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;

tions 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 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

(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 proposed restriction and that the 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,

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

(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

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 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

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

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.

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. 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 requesting reevaluation by the FAA. Such demonstration and certification shall document all attempts of local dispute resolution.

§ 161.405 Request for reevaluation.

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

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

(2) A clear, concise description of the restriction 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.

(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:

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

ing 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.

mentation 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

dures 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 an 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

§ 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.

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

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.

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