

14 CFR Parts 93 and 159

[Docket No. 19948, Amdt. Nos. 93-42 and 159-24]

Metropolitan Washington Airports

AGENCY: Federal Aviation Administration (FAA)/Department of Transportation (DOT).

ACTION: Notice of deferral of effective dates of final rules.

SUMMARY: Notice No. 81-4 requested comments on a proposal to delay the effective date of the Metropolitan Washington Airports Policy and implementing regulations (45 FR 62397; September 18, 1980) in order to enable the Secretary to review its provisions, in light of Executive Order 12291 (46 FR 13193; February 19, 1981), and in view of the Department's inability to complete the permanent rulemaking on slot allocation at Washington National Airport (45 FR 71236; October 27, 1980). Comments received on Notice No. 81-4 have substantiated the reasons stated for the proposal, and the effective date of the Policy and rules will accordingly be delayed until October 25, 1981. Any changes to the existing Policy will be developed by July, 1981.

DATE: The effective date of the amendments to 14 CFR 93 and 159 is delayed until October 25, 1981.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, Counsel (703) 557-8123, Metropolitan Washington Airports, Federal Aviation Administration, Washington National Airport, Hangar 9, Washington, D.C. 20001.

Background

On March 5, DOT/FAA published Notice No. 81-4 (46 FR 15458), requesting comments by March 19 on a proposal to delay the effective date of the Metropolitan Washington Airports Policy and implementing regulations. The Policy and regulations (Amendments 93-37 and 159-20) were to guide the future operation and development of Washington National and Dulles International Airports (45 FR 62398; September 18, 1980) and were scheduled to become effective on January 5, 1981. The Department of Transportation and Related Agencies Appropriations Act, 1981, Pub. L. 96-400, provides that none of the funds appropriated in the Act may be used to mandate any reduction of the number of certificated air carrier slots per hour at

Washington National Airport below the number authorized on September 12, 1980, before April 26, 1981. As a result of that law and a decision of the Secretary of Transportation, the FAA postponed the effective date of Amendments 93-37 and 159-20 (Amendments 93-38 and 159-22: 45 FR 71251; October 27, 1980). A new effective date of April 26, 1981, was established for all provisions of the Policy.

Notice 81-4 gave five reasons for delaying the effective date of the Policy once again:

1. Executive Order 12291 (46 FR 13193; February 19, 1981) established new government-wide standards for the issuance rules and required that "major" rules issued but not yet in effect as of February 17 be suspended or postponed while undergoing reconsideration under the Order

2. At my confirmation hearing, at the request of members of the Senate Commerce Committee, I agreed to undertake a review of the Policy. That review is now under way.

3. An additional rulemaking to determine whether to permit quieter aircraft to operate after curfew hours has not been issued. If the Policy were imposed on April 26, commuter air carrier flights operating in the early morning and late evening hours would be barred.

4. Provisions of the Policy shifting four operating slots per hour from scheduled air carriers to commuter air carriers and redefining the commuter air carrier category have made agreement in the air carrier and commuter air carrier scheduling committees almost impossible, thus necessitating DOT action to allocate slots if the Policy were not delayed.

5. The Department's rulemaking on a permanent method of slot allocation at National Airport (45 FR 71236; October 27, 1980) has not yet been completed. This means that the Department does not have an adequate means of allocating slots in the event the scheduling committees fail to agree on slot distribution for the summer (April 26-October 24) season.

The Airline Scheduling Committee, upon receipt of the Notice proposing a delay, undertook a hypothetical allocation of 40 slots per hour for the hours 7 a.m. to 10 p.m., as permitted by the existing rule, and successfully resolved a schedule. Thus we know that slot allocation at National will not require Departmental action if the Policy is delayed.

Public Comment

Over forty comments were received in response to the Notice. For the most part, commenters restated their positions on the Policy itself: community groups, local governmental bodies, and local Congressional representatives, expressing varying degrees of satisfaction with it, urged that it be permitted to take effect as scheduled; air carriers and cities that desire more service to National urged that the Policy be delayed.

Some commenters urged an interim Policy incorporating their favored provisions. Eastern Air Lines, consistent with a petition for rulemaking it had previously filed with the FAA, asked that widebody aircraft be permitted to operate at National immediately. New York Air, also consistent with a petition it had filed, sought an exemption from the High Density Rule for flights in the Northeast Corridor. These petitions will be dealt with on an individual basis; they will not be addressed here.

The City of New Orleans and the Chamber-New Orleans & the River Region asked that the perimeter rule, which would permit non-stop flights of 1,000 miles from National, take effect as scheduled. The City of Houston repeated its allegations that such a perimeter rule is unlawful. Imposition of the perimeter rule separate from the rest of the Policy provisions would be inappropriate. In the meantime, perimeter restrictions are maintained by informal agreement, not by Departmental regulation.

Commenters also expressed conflicting views on the applicability of Executive Order 12291, consistent with their views on whether the Policy should be delayed. The Department has not yet determined whether the implementing rules should be classified as "major" under the Order, but it is clear in any event that, even if the Department decides that they are not, the Office of Management and Budget must be given an opportunity to review the question. A delay in the effective date is needed to provide sufficient time to answer this question.

In sum, the comments received have not led us to change our position on any of the five reasons originally stated for amending the effective date of the Metropolitan Washington Airports Policy and implementing regulations. Accordingly, the effective dates are amended to October 25, 1981. The Policy will be reviewed over the next several

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months, and any changes to it that may be developed will be published in July.

Immediate Effectiveness

This amendment will obviate major schedule adjustments by the scheduled air carriers and commuter air carriers, avoiding serious disruption and uncertainty of service at National Airport and resultant inconvenience to the traveling public. Therefore, it would be contrary to the public interest to delay its issuance. It will therefore take effect March 30, 1981.

Adoption of the Amendment

In order to provide adequate time to review the Policy, for an additional rulemaking on the curfew to be conducted, and for the scheduling committees to implement their present tentatively agreed-upon schedules for the summer season, effective March 30, 1981, the effective dates of the Metropolitan Washington Airports Policy (45 FR 62397; September 18, 1980) and Amendments 93-37 and 159-20 (45 FR 62406; September 18, 1980), as amended by Amendments 93-38 and 159-22 (45 FR 71251; October 27, 1980) are further amended to October 25, 1981.

(Secs. 103, 307 (a), (b), and (c), and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348 (a), (b), and (c) and 1354(a)); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 686, as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655))

Note.—This change of effective dates is not a significant regulation under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C. on March 24, 1981.

Andrew L. Lewis, Jr.,
Secretary of Transportation.

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