

**14 CFR Part 159**

**[Docket No. 21725; Amendment No. 159-25]**

**Metropolitan Washington Airports**

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

**ACTION:** Final rule.

**SUMMARY:** This amendment codifies current practice that turbojet air carrier aircraft may not be operated into or out of Washington National Airport on scheduled nonstop flight segments of more than 650 statute miles except for nonstop flights operating to or from certain cities historically excepted from the 650-mile limitation. This amendment is necessary in order to maintain operational restrictions that have been in existence for approximately 15 years at National Airport while the Metropolitan Washington Airports Policy and implementing regulations are reviewed by the Secretary of Transportation in accordance with Executive Order 12291 as announced in a previous rulemaking action.

**EFFECTIVE DATE:** May 26, 1981.

**FOR FURTHER INFORMATION CONTACT:** Edward P. Faberman, Assistant Chief Counsel (AGC-200), Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3073.

**SUPPLEMENTARY INFORMATION:** On May 8, the Department of Transportation issued a Notice of Proposed Rulemaking (46 FR 26358; May 12, 1981 and 46 FR 26656; May 14, 1981) which proposed to formally adopt the existing practice of limiting nonstop flights to and from National Airport to 650 miles, except for seven cities. The notice was issued in response to representation by several air carriers that they were contemplating immediate departure from this practice before the Secretary could complete his review of the previously adopted regulations on this issue.

On May 5, 1981, R. L. Crandall, President of American Airlines, advised the Federal Aviation Administration (copy of the letter is in the docket) that on June 11, 1981, American Airlines would commence new nonstop service between Dallas/Fort Worth (DFW) and Washington National Airport (DCA). Since receiving that letter, the FAA has been advised that Braniff Airlines announced it intends to begin similar service on June 1 and Pan Am intends to conduct nonstop flights to and from Houston. These air carriers have been extensively advertising this proposed

nonstop service. For example, on May 14, 1981, Pan Am placed a full-page ad in *The Washington Post* to announce its proposed new nonstop service from DCA to Houston while on the same date, in the same paper, American advertised its proposed service to DFW from National. In American's letter to the FAA, Mr. Crandall states the following:

There are no rules, regulations or operational considerations that preclude a nonstop operation of Boeing 727-200 aircraft between Washington National and Dallas/Fort Worth Airports. Perimeter rules, such as the one that was briefly adopted by carrier agreement in the mid-1960's and the one more recently proposed by the FAA during the Carter Administration, would serve to preclude such a service, but would at the same time exacerbate the competitive inequities already noted.

Although there is no Federal Aviation Regulation setting forth a mileage limitation for operations into and out of National Airport, such a restriction has existed by agreement and understanding for approximately 15 years. It has been articulated repeatedly in FAA publications and there can be no question of the air transport industry's awareness of and adherence to this practice. In fact, no air carrier has during the past decade and a half attempted to or conducted flights that were not consistent with this accepted practice.

Since 1966, there have been numerous regulatory and policy documents (including several in which the public has been given ample opportunity to comment) which have made it clear that the 650-mile nonstop limitation at Washington National Airport was in existence and adhered to by all carriers.

On May 25, 1966, the Civil Aeronautics Board approved an agreement submitted by the Air Transport Association (ATA) on behalf of 12 air carriers, including American Airlines, in which the air carriers agreed that they would not operate turbojets into and out of DCA on nonstop segments of more than 650 statute miles, except on those nonstop route segments of more than 650 statute miles and less than 1,000 statute miles being operated by any parties thereto on a nonstop basis by schedules in effect December 1, 1965 (the seven "grandfathered" cities).

On July 27, 1966, the Director of the Bureau of National Capital Airports issued Notice of Proposed Rulemaking 66-29 (31 FR 10199; July 28, 1966) in which it was stated that the FAA was considering methods of affecting limitations on the number of air carrier operations at Washington National Airport as part of the general policy to provide the maximum service to the

flying public. Included in the NPRM was a 650-mile limitation.

On February 2, 1972, the Acting Manager of National Capital Airports withdrew Notice 66-29 (37 FR 3059; February 11, 1972) stating that the agency had determined that the proposed rulemaking action was no longer appropriate since the objective of that notice had been accomplished by air carrier agreement and the high density air traffic rules.

Although not formally codified, the perimeter practice has been uniformly understood by the carriers. In fact, because it is a condition affecting operations at Washington National Airport, the FAA has clearly set forth this practice in the Notices to Airmen since 1974. The Notices to Airmen issued by the FAA have stated the following:

Turbojet aircraft described in paragraph B (9-13), may not be operated into or out of airport on flight segments of more than 650 statute miles except for nonstop flights of less than 1,000 miles operating to or from the following cities:

Miami, Florida; Memphis, Tennessee; Minneapolis, Minnesota; Orlando, Florida; St. Louis, Missouri; Tampa, Florida; and West Palm Beach, Florida.

Notices to Airmen (NOTAMs) are distributed by the FAA to notify airmen of changes in navigational or procedural rules, operating conditions, and information vital to flight safety. Class Two NOTAMs, such as the one used to state the 650-mile limitation at Washington National, are distributed on a biweekly basis to all FAA facilities, and to a large number of interested private subscribers, including air carriers. As part of their preflight planning, pilots are trained to check the NOTAM publications for information relating to their planned flight.

Because of its longstanding nature and because it was known to all for a number of years, publication of the perimeter was transferred from the NOTAM system to another FAA publication, *Graphic Notices and Supplemental Data*. This publication receives the same dissemination as the NOTAMs, but is published on a quarterly basis.

The Metropolitan Washington Airports Policy draft Environmental Impact Statement issued in March 1978, reiterated the understanding that Washington National Airport was designated as the area's short-haul airport with nonstop flights limited to a radius of 650 miles, except for seven cities. These cities had nonstop services with propeller aircraft prior to 1966 and are still provided nonstop services under

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the provisions of a "grandfather" clause.

On January 21, 1980, the FAA issued an NPRM (45 FR 4314; January 21, 1980) which proposed to adopt rules to implement the DOT/FAA policies to guide the future operations and development of Washington National and Dulles International Airports. One of the proposals contained in the NPRM dealt with nonstop service restrictions to and from Washington National Airport. The NPRM contained the following paragraph:

The FAA believes that for the time being a perimeter restriction is necessary to preserve National Airport's "medium" and "short haul" and local service role and keep it distinct from the "long haul" and international role of Dulles Airport. FAA views the perimeter restriction on National as an important element to an effective managed growth policy at National.

The preamble further discussed the effects of limitation of the perimeter rule and, in fact, specifically talked about nonstop service from Washington to DFW. The NPRM proposed extension of the perimeter rule to 1,000 miles. Although numerous comments were submitted concerning the proper extent of any perimeter requirement, all comments recognized the existence of the current 650-mile limitation. On September 15, 1980, a final rule was issued by the Administrator which established the nonstop perimeter at DCA at 1,000 statute miles.

This rule was to become effective on January 5, 1981. The Congress, in the DOT and Related Agency's Appropriation Act of 1981, Pub. L. 96-400, mandated a delay in certain aspects of the policy. The effective date of the entire policy, including the perimeter, was postponed until April 26, 1981, because the policy components are interrelated and should be treated as a package and not in a piecemeal fashion.

On February 27, 1981, the Secretary of Transportation proposed a further delay of the effective date for the Metropolitan Washington Airports Policy and implementing regulations. The proposed change in the effective date was necessary to ensure compliance with Executive Order 12291 (46 FR 13193; February 19, 1981), which provided new government-wide standards for the promulgation of rules. In addition, the change in the effective date was necessary to complete the Department's permanent rulemaking on slot allocations at Washington National Airport, and was consistent with both a request by the Senate Commerce Committee to the Secretary that the policy be reviewed and with Congressional concerns expressed in the action that led to the initial delay of the policy until April 26.

Therefore, on March 24, 1981, in order to provide adequate time to review the Metropolitan Washington Airports Policy, the effective date of the regulation was postponed by the

Secretary until October 25, 1981 (46 FR 19225; March 30, 1981). The Secretary stated that after the policy was reviewed, any changes to it that might be developed would be published in July.

The perimeter limitation has been discussed in detail in rulemaking actions taken within the Department of Transportation during the past several years. In each case, the public has been given extensive opportunity to comment on the subject of proposed changes to the perimeter restrictions. A major element of the policy delayed by the Secretary of Transportation was the establishment of a 1,000 statute mile perimeter rule for National Airport. It should also be noted that the nonstop service planned by American, Braniff, and Pan Am from DFW and Houston to DCA would violate this 1,000-mile restriction which is currently being reviewed. Therefore, the proposed service by American, Braniff, and Pan Am would not only overturn practices of 15 years duration relating to the character of service available at National Airport, but would also interfere with the orderly review process announced by the Secretary.

Therefore, the FAA is inserting into the Federal Aviation Regulations this longstanding 650-mile limitation with specific exceptions pending review of the entire Metropolitan Washington Airports Policy.

This amendment is not intended to be an ultimate resolution of the type of service to be provided to National Airport nor does it reflect a final Departmental decision on whether there should be a perimeter of the extent of any decided upon restriction. Rather, it is merely intended as an interim measure to preserve the character of current operations at National Airport while permitting the Department of Transportation the opportunity to consider fully all the interrelated aspects of a potential policy for the Metropolitan Washington Airports.

#### Public Comment

Approximately 150 comments were received on the NPRM. These included comments from air carriers, community groups, local government bodies, representatives of pilots and aircraft owners, as well as several Congressmen.

The overwhelming number of commenters supported the proposal contained in the NPRM. The commenters who have made submittals in opposition to the NPRM have basically restated positions previously taken in litigation and in comments received and considered by the Department during the development of the now being reviewed Metropolitan Washington Airports Policy.

Those supporting the NPRM include the Commonwealth of Virginia, the State of Maryland, Dulles Policy Task Force,

Commuter Airline Association, Indianapolis Airport Authority, Air Line Pilots Association, the Aircraft Owners and Pilots Association, and the majority of all air carriers which submitted comments.

Several commenters questioned the duration of this regulation. The Metropolitan Washington Airports Policy implementing regulations include a Section 159.60, which in accordance with the Secretary's decision of March 24, 1981, is now scheduled to become effective on October 26, 1981. Thus on that date (unless other rulemaking occurs) the perimeter provision contained in that rule will, by law, supersede and replace the interim perimeter provision contained in this amendment. Therefore, there is no reason to put terminating language directly into the interim rule. It must be noted that any action to change the October 25 effective date established by the Secretary or the policy and implementing regulations scheduled to go into effect on that date would be accomplished only after notice and an opportunity for public comment. Therefore, the public would be assured full participation if any additional rulemaking is needed in this area.

Those submitting comments opposed to the notice primarily raised issues relating to the policy implications and the agency's legal authority to issue a perimeter rule. While many of these commenters prepared detailed comments on these issues, the proper forum for comments concerning such broad issues is in the docket pertaining to the Metropolitan Washington Airports Policy, not the docket for this rulemaking, the objective of which is to maintain the status quo pending the resolution of the broad policy and legal issues. The Department appreciates this input and will place the comments in FAA Docket Nos. 19948 and 19950, which are the dockets being reviewed in accordance with the Secretary's decision to review the Metropolitan Washington Airports Policy.

It is interesting to note that the three carriers directly opposed to this interim rule (Braniff, American, and Pan Am) never did file comments regarding the perimeter during the long regulatory development of the Metropolitan Washington Airports Policy. Comments on the draft policy were submitted by ATA on behalf of member carriers operating at National Airport, including the three mentioned above.

ATA's April 14, 1980, entire comment on the proposed 1,000-mile perimeter rule reads as follows:

The 15 ATA member airlines now serving National Airport are not of a single view concerning the nonstop perimeter rule proposed for that airport. The majority are opposed to any limit; however, in the event a limit is to be established, of that majority 11 would favor the 1,000-mile alternative, while 1 airline would favor the current policy. Three other member airlines prefer maintaining the current operating policy restricting nonstop flight to 650 miles with the exception of the seven "grandfather cities" within 1,000 miles of the airport.

It is clear from this comment that the air carrier community recognized the "current operating policy" of a 650-mile restriction.

It is evident that comments addressing the legality and appropriateness of a perimeter should have been filed during the comment periods for the Environmental Impact Statement (March 1980) or for the Airports Policy (January 1980). Hundreds of other comments were filed during these comment periods which resulted in a final rule which established a 1,000-mile perimeter for National Airport.

American, Braniff, and Pan American would have the Department ignore the timely comments submitted by the public, representatives of local and state governments, and various segments of industry which were fully considered during the development of the perimeter rule. They would ask that the long public process which culminated in the issuance of a final rule be ignored because of recently developed beliefs. Such an action would be totally inconsistent with the Department's responsibility to the public.

Several opposing comments were raised in connection with this proposal which must be addressed. Perhaps the most egregious comment filed by those in opposition to the proposal is one made by Pan American. In its comment, Pan American states that the proposed rule:

Now threatens a new service as to which Pan American has prudently planned and has begun to advertise and accept reservations. Promulgation of this rule on such short notice will deprive the public of a valuable service, inconvenience thousands of travellers and cause Pan American substantial and irreparable harm.

This comment ignores the history of this limitation and is inconsistent with recent actions taken by Pan American. Pan American talks about its "prudent plan," yet this limitation has been in existence for 15 years and for the first time, several weeks ago, Pan American announced its decision to ignore this historical limitation. As stated above, Pan American failed to make comments on the perimeter during the public comment process. Pan American also

stated that it has begun advertising and accepting reservations. This fact cannot be denied. However, it must be recognized that any inconvenience to Pan American or to the public is Pan American's responsibility. Although the NPRM proposing to formalize the perimeter as a regulation was issued on May 8, 1981, and was published in the Federal Register on May 12, Pan American's advertising campaign (including a full-page in *The Washington Post* on May 20, 1981 the day after this comment period closed) never suggested to the public that its authority to operate the proposed nonstop operations might be voided by government regulations. If, in fact, the public is inconvenienced, it will be by Pan American's precipitous actions, not the Department's. This Department regrets any public inconvenience attendant to the promulgation of this rule. At the same time, the ultimate source of that inconvenience is the carrier which persisted in the promotion and sale of these flights during the pendency of this rulemaking.

Several commenters have stated that the proposed action would not maintain the status quo but would change it. As previously discussed, this perimeter limitation has existed for 15 years without any carrier attempting to or actually conducting an operation in violation of this limitation. Over 3½ million operations have been conducted by air carriers since this limitation was first established; each one consistent with it. As to the existence of such a limitation, we note the following statement contained in Eastern Airlines' comments in support of the rule:

As Notice No. 81-7 points out, the perimeter rule with its exceptions was established by a 1966 agreement of carriers, including American, Braniff and National, which agreement was ratified by CAB and has been regularly followed and applied since such date. Because of this agreement, no formal rulemaking was deemed necessary by the FAA. Since American was one of the original parties to the 1966 agreement, it is a remarkable exercise in sudden forgetfulness for American to contend now that it is free to violate the rule.

Similarly, TWA stated:

TWA does not now take a position with respect to the substantive merits of any perimeter rule. In our view, however, a significant departure from present operating practices, like that proposed by American in disregarding the informal perimeter rule, presents a change in the status quo that may adversely impact communities presently receiving nonstop service to National—perhaps irrevocably—and would unduly affect the Administrator in his consideration of the rules pending with respect to Washington airports policy and National

Airport's place in the national air transport system.

Clearly, the status quo is a 650-mile perimeter with a 1,000-mile perimeter effective on October 26, 1981, pending Secretarial review of the entire policy. Any argument that a different status quo exists ignores 15 years of practice and rulemaking.

Several commenters stated that they believed that the issuance of a regulation as proposed in the notice is inconsistent with Executive Order 12291 in that it proposes a regulation where one does not currently exist. It has been the Department's hope all along that it would not be necessary to issue a regulation codifying the 650-mile perimeter. Only when it became apparent that these carriers would not refrain from instituting this new service was it necessary to promulgate a regulation. In this connection, we note the following comments submitted by Eastern Airlines on this point:

Not only does Eastern consider FAA's action to be sound, but Eastern also considers the method by which FAA acted to be appropriate. With little more than a month's notice, American, Braniff and Pan American have informed the FAA of their respective intentions to violate an understanding of 15 years duration. The actions of these carriers, if unchecked, will likely cause other carriers, for competitive reasons, to attempt to institute service beyond the perimeter.

We also note the following comments submitted by the Washington National Commuter Airlines Association:

Regulatory agencies themselves cannot summarily reverse longstanding industry practices, without substantial evidence and a reasoned decision to support such a change.

Similarly, an individual entity in an industry should not be able to destroy an industry practice acquiesced in by the pertinent regulatory agency, without equally substantial regulatory support and procedural due process.

Although there is no regulation which prevented operations beyond 650 miles, there can be no argument that it was a limitation which had been strictly observed for 15 years. For this reason this rulemaking is consistent with Executive Order 12291.

The City of Houston stated in its comments that the NPRM failed to provide adequate time for comments. It appears, however, from the breadth of the comments, as well as their length, that other parties had ample opportunity to respond. It should be noted that no party asked for an extension of the comment period as provided for in 14 CFR Part 11. It should also be noted that the attorneys for the City of Houston, as

well as other parties, were notified prior to the time of publication of the NPRM in the *Federal Register* to give them as much notice as possible. The fact cannot be ignored, however, that the time period given for comment on the NPRM was dictated by the limited amount of notice provided by American, Braniff, and Pan American of their proposed institution of service which would break a 15-year record of cooperation. Because the carriers intended to commence service beginning on June 1, it was not possible to give additional time for comments. It is essential that this issue be resolved as quickly as possible so that the public has sufficient notice as to whether this service will be available or not. Under these circumstances the issue has been sufficiently aired; any additional delay would cause needless public confusion.

Several of the airline commenters question the need for a perimeter to maintain service at Dulles Airport. They contend either that Dulles does not need the protection of the perimeter or that decreases in Dulles activity are due to market forces which should not be disrupted. Unquestionably, the perimeter at DCA does affect operations at Dulles. If this regulation were not issued, it is likely that some carriers would commence service, not only to the Texas markets proposed by Pan American, American, and Braniff, but also to other cities outside the current perimeter now served by nonstop service to and from Dulles. In addition, competing carriers would likely be forced to move from Dulles to DCA. For example, in comments filed in this proceeding, Continental Airlines stated:

Continental takes no position per se on whether the existing 650-mile perimeter rule should or should not be modified at this time. However, in the event that the perimeter rule is lifted, we would be compelled to shift some or all of our Dulles operations to Washington National Airport.

Similarly, US Air stated:

Another equally compelling reason supports immediate adoption of the present National perimeter rule as an FAR. Unless the FAA maintains the status quo, long-haul services at National will proliferate, thereby diverting traffic from Dulles to National.

Clearly, the perimeter is integrally related to the efforts to establish a Metropolitan Washington Airports Policy. A sudden change in the practices of the past 15 years would be inconsistent with this Department's efforts to place reasonable limits on the spiraling use of National Airport. It could be inconsistent with efforts to achieve a more balanced use of the fine

facilities at Dulles and Baltimore-Washington International Airports. It could place added pressure on the already stressed slot availability issue of National, and a shift in a large number of long-haul flights to DCA, with its limited number of slots, could supplant service via National to smaller, closer-in cities. This integral relationship demands that the perimeter be considered in the context of the overall airport policy which is what the Department has undertaken to do.

While the Department is most sensitive to arguments that free market forces should be permitted to work without government intervention, the Secretary is charged by law with "operating and maintaining" Dulles and National Airports. Their continuing economic viability, the services they provide to the travelling public, and their impact on the community are all the proper concerns of this Department. These concerns will be addressed in the review of the Metropolitan Washington Airports Policy. One of the decisions to be reviewed is whether the practice of limiting nonstop flights at National should be maintained, and if so, at what distance. This decision will be made in light of all of the comments and arguments advanced in the past year and a half of rulemaking. It would be inappropriate to allow the alteration of a major component of the policy before our review is completed.

#### Violation of This Section

In addition to the penalty provisions contained in the Federal Aviation Act, the public should be aware that any individual who violates this provision is subject to arrest and criminal penalties under Sec. 4 of the Act of June 29, 1940, 54 Stat. 686; as amended by the Act of May 15, 1947, 61 Stat. 94; and the Federal Aviation Act of 1958 as amended, 49 U.S.C. 1301, et seq.

#### Effective Date

This regulation responds to an emergency situation and good cause exists for making this rule effective in less than 30 days after publication. It will become effective on May 26, 1981. This effective date is necessary to ensure that announced nonstop operations which would be inconsistent with this amendment do not go into effect. It is also needed to lessen the inconvenience to the public. As a result of actions taken by the air carriers proposing this service, it is essential that this rule become effective as soon as possible so that the public will be

informed that such nonstop service is not available and the carriers and the public can make other travel arrangements.

As discussed earlier in this document, the rules implementing the Metropolitan Washington Airports Policy (which is scheduled to become effective on October 25, 1981) contain a 1,000-mile perimeter rule. Absent further rulemaking action, on that date, the 1,000-mile rule will replace the 650-mile provision in this amendment.

#### The Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR 159) is amended by adding a new § 159.60 to read as follows:

#### § 159.60 Nonstop operations.

No person may operate an air carrier aircraft nonstop between Washington National Airport and any airport that is more than 650 statute miles away from Washington National Airport, except for nonstop flights to or from the following cities: Miami, Florida; Memphis, Tennessee; Minneapolis/St. Paul, Minnesota; Orlando, Florida; St. Louis, Missouri; Tampa, Florida; or West Palm Beach, Florida.

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

*Note.*—Since this rulemaking does nothing more than retain a current operating restriction at DCA for a short period of time pending review of the overall Metropolitan Washington Airports Policy, the Department has determined that: (1) It is not a major regulation under Executive Order 12291; (2) It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) It does not warrant preparation of a regulatory evaluation as the impact is so minimal; and (4) It will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on May 26, 1981.

J. Lynn Helms,  
Administrator.

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