

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 159****[Docket No. 28556; Amendment No. 159-32]****RIN 2120-AG05****Removal of Part 159; National Capital Airports****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comment.

**SUMMARY:** The FAA is removing part 159, entitled "National Capital Airports," from Title 14, Code of Federal Regulations (14 CFR). That part has prescribed regulations for the use and occupancy of Washington National Airport and Washington Dulles International Airport, which now are operated by the Washington Metropolitan Airports Authority and not by the Federal government. Similar regulations have been adopted by the Airports Authority, and the Federal regulations no longer govern use and occupancy at either airport. This rulemaking action will remove unnecessary Federal regulations from the Code of Federal Regulations.

**EFFECTIVE DATE:** The final rule is effective May 2, 1996. Comments on this action must be received on or before June 3, 1996.

**ADDRESSES:** Comments on this notice may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 28556, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: "Docket No. 28556." Comments may also be sent electronically to the following internet address: [nprmcmts@mail.hq.faa.gov](mailto:nprmcmts@mail.hq.faa.gov). Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Kevin Hehir, Airport Safety and Compliance Branch (AAS-310), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267-8224.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

The final rule will remove part 159 from Title 14 of the Code of Federal Regulations and clarify that the

Washington Metropolitan Airports Authority is responsible for adoption and enforcement of regulations that apply to National Airport and Dulles International Airport. This final rule is an administrative and procedural action consistent with the objectives of Executive Order 12866. Because these regulations are no longer in effect by operation of law, the final rule is being adopted without notice and prior public comment. However, DOT regulatory policies and procedures encourage operating administrations to provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from promulgating the final rule are also invited. Substantive comments should be accompanied by cost estimates. All comments received on or before the closing date for comments will be considered by the agency. The action taken in this final rule may be changed in light of the comments received. All comments received both before and after the closing date for comments will be available for review by interested persons in the Rules Docket. A report summarizing each substantive public contact with FAA personnel on this rulemaking will be included in the docket. Commenters who would like the FAA to acknowledge receipt of comments on this final rule must include with the comments a preaddressed, stamped postcard that states "Comments to Docket No. 28556." The postcard will be date-stamped and returned to the commenter.

**Background**

On October 18, 1986, the Metropolitan Washington Airports Act of 1986 was signed by the President (49 U.S.C. App. 2452 et seq.). The 1986 act authorized the Federal government to transfer operating responsibility for Washington National Airport and Washington Dulles International Airport, under a long-term lease of 50 years, to an independent local agency. That local agency is the Metropolitan Washington Airports Authority—a public body with regulatory authority created under the laws of the Commonwealth of Virginia and the District of Columbia. One of the purposes of the 1986 act was to "achieve local control, management, operation, and development" of both airports (49 U.S.C. App. 2453(a)). Part of that local control includes day-to-day

operation, and regulation of the use and occupancy, of both airports by the local Airports Authority.

In the 1986 act, Congress provided a mechanism to facilitate smooth transition of operational control and responsibility to the Airports Authority, such as ensuring the continuation of regulations that governed the use and occupancy of National Airport and Dulles International Airport. Under § 6005(c)(5) of the act (49 U.S.C. App. 2455(c)(5)), the regulations in part 159 were to become the regulations of the Metropolitan Washington Airports Authority on June 7, 1987, the date the long-term lease between the Federal government and the Airports Authority was effective. Under the 1986 act, those regulations were to be effective as regulations of the Airports Authority until modified or revoked by the Airports Authority under procedures developed for such administrative actions.

This transition mechanism was intended to enable the Metropolitan Washington Airports Authority to continue to rely on the Federal regulations, with certain exceptions noted in the 1986 act, for only a short time. However, on April 1, 1987, the Metropolitan Washington Airports Authority adopted its own regulations for National Airport and Dulles International Airport by Resolution 87-5. Thus, use and occupancy regulations actually were effective shortly after formation of the Airports Authority on October 18, 1986, and several months in advance of the lease effective date of June 7, 1987. Adoption of those regulations by the Airports Authority essentially eliminated the need for regulations contained in 14 CFR part 159.

Congress authorized the Airports Authority to " \* \* \* maintain, improve, operate, protect, and promote \* \* \* " the Washington Metropolitan Airports (49 U.S.C. 2457(c).) The Airports Authority's regulations, adopted in 1987, assist the daily operation of the airports and have been effective and used continuously by the Airports Authority and the public since the creation of the local entity and the transfer of both airports. Copies of the regulations generally are available at local libraries near either airport and upon request from the Office of Legal Counsel for the Metropolitan Washington Airports Authority. The Office of Legal Counsel is located in Alexandria, Virginia; the telephone number is (703) 739-8615.

### Recent Regulatory Reviews

Both DOT and the FAA have conducted regulatory reviews and requested comment on regulations that could be eliminated to reduce any unnecessary or undue regulatory burdens consistently with the FAA's statutory safety, security, and public interest responsibilities. (See 57 FR 4744, February 7, 1992; 59 FR 1362, January 10, 1994.) There were no comments supporting retention or advocating elimination of part 159 in response to either request for comment. In both notices of regulatory review, DOT and the FAA stated that changes, including repeal where appropriate, would be considered to ensure that regulations and regulatory programs were consistent with Presidential direction regarding the regulatory review. Eliminating the regulations in part 159 is consistent with the requirements of Executive Order 12866 (September 30, 1993). Specifically, that order requires Federal agencies to "identify regulations that are cumulative, obsolete, or inconsistent, and where appropriate, eliminate or modify them."

This action will not alter any existing responsibility for, or the enforcement of, the regulations that now apply to use and occupancy of Washington National Airport and Washington Dulles International Airports. Despite legal challenges to certain provisions of the 1986 act, the validity of the regulations adopted in 1987 by the Airports Authority has not been questioned. (See 501 U.S. 252 (1991) and 36 F.3d 97 (1994), 115 S.Ct. 934 (1995).) In addition, a specific savings clause included in subsequent legislation enacted in 1991 would ensure the continued vitality of the regulations adopted in 1987. (See 7004(b) of Pub. L. 102-240, December 18, 1991.) The Airports Authority, the Federal government, and the public continue to rely on the local regulations, and not the Federal regulations in part 159, for use and operations at both airports. The FAA does not envision any future need for the Federal regulations on the part of the Federal government, the general public, or the Airports Authority. Continued publication of these regulations is neither necessary nor cost-effective and they should be removed from the CFR.

### Paperwork Reduction Act

There is no requirement to collect or submit information associated with this rulemaking. Any information collection requirements associated with part 159 will be eliminated when this part is

removed from the Code of Federal Regulations. Therefore, there are no issues of compliance regarding the Paperwork Reduction Act of 1980 (Pub. L. 96-511), as amended by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), or OMB implementing regulations (60 FR 44978; August 29, 1995).

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by regulations. The Act requires Federal agencies to analyze the economic effect of regulatory changes on small entities. A regulatory flexibility analysis is required if a proposal will have a significant economic impact on a substantial number of small business entities. Removing these obsolete and possibly inconsistent regulations that apply only to the Washington Metropolitan Airports will not have a significant effect on any small business entities under the criteria of the Regulatory Flexibility Act or FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," which establishes threshold costs and size standards to assist compliance with the act.

### International Trade Impact Analysis

The Office of Management and Budget directs Federal agencies to assess the effect of regulatory changes on international trade. Removing part 159 will have no impact on trade for U.S. firms doing business in foreign countries or foreign firms doing business in the United States. Thus, adopting this final rule will not constitute a barrier to international trade.

### Federalism Implications

The final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In fact, adopting this final rule is consistent with the transfer of operating authority and responsibility to a local public entity as directed by Congress in the Washington Metropolitan Airports Act of 1986. Therefore, in accordance with Executive Order 12612, this final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

### Conclusion

Removing part 159 from the Code of Federal Regulations is not a significant regulatory action under the criteria in Executive Order 12866, entitled "Regulatory Planning and Review," issued on September 30, 1993 (58 FR 51735; October 4, 1993), or the guidance issued by the Office of Management and Budget for implementation of E.O. 12866 (dated October 12, 1993). This rulemaking action also is not significant under DOT Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations." Removing part 159 is not expected to have any economic impact on the use and occupancy or daily operation of the Washington Metropolitan Airports. The FAA has not identified any specific economic consequences attributable to eliminating these redundant regulations. To the extent this rulemaking action has any economic impact, the only impact will be the savings to the Federal government realized by discontinuing publication of this part in the CFR. If there are any costs or benefits associated with removing part 159, the FAA expects their value, if any, to be minimal under the criteria of applicable Executive Orders, statutes, or regulations. Since there are no costs expected to accrue and only minimal benefits are anticipated, the FAA is not required to prepare a full regulatory evaluation of this final rule.

### Reason for No Notice and Immediate Adoption

Under § 6005(c)(5) of the Metropolitan Airports Act of 1986 (49 U.S.C. App. 2455(c)(5)), the regulations in part 159 were to become the regulations of the Metropolitan Washington Airports Authority on June 7, 1987, the date the long-term lease between the Federal government and the Airports Authority was effective. Under the 1986 act, those regulations were to be effective as regulations of the Airports Authority, until modified or revoked by the Airports Authority, under procedures developed for such administrative actions.

On April 1, 1987, the Metropolitan Washington Airports Authority adopted its own regulations for National Airport and Dulles International Airport by Resolution 87-5. Thus, local use and occupancy regulations actually were effective shortly after formation of the Airports Authority on October 18, 1986, and several months in advance of the lease effective date on June 7, 1987. The regulations authorized by Congress and adopted by the local agency for the expressed purpose of transferring

operating authority and responsibility for the airports have been effective and used continuously by the Airports Authority and the public since the creation of the local entity and the transfer of both airports. The regulations are generally available at local libraries near either airport and are available upon request from the Office of Legal Counsel for the Metropolitan Washington Airports Authority. Adoption of the final rule, therefore, will have no effect on operations of the Metropolitan Washington Airports, the users of the airport, the general public,

the Airports Authority, or the Federal government.

Accordingly, notice and public comment are unnecessary. In addition, good cause exists, under § 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)), to make this amendment effective in fewer than 30 days. In accordance with DOT regulatory policies and procedures, an opportunity for public comment on the final rule is provided.

#### List of Subjects in 14 CFR Part 159

Air carriers, Air traffic control, Aircraft, Airports, District of Columbia,

Federal buildings and facilities, Fire prevention, Law enforcement. Reporting and recordkeeping requirements, Security measures, Traffic regulations.

#### The Amendment

Accordingly, pursuant to 49 U.S.C. 44701, the Federal Aviation Administration amends 14 CFR by removing part 159.

Issued in Washington, DC, on April 26, 1996.

David R. Hinson,

*Administrator.*

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