

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. 28213; Notice No. 95-6]

RIN 2120-AE83

Stage 2 Airplane Operations**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document proposes revisions to the airplane operating rules to provide reporting requirements for operators of Stage 2 airplanes in Hawaii. These revisions would require any U.S. operator or foreign air carrier that operates Stage 2 airplanes in Hawaii to include certain information in its annual progress reports to the Federal Aviation Administration (FAA). This action also proposes a change to clarify that certain operations of aircraft (otherwise restricted from operation in the contiguous United States) are allowed, and proposes a change to correct an oversight made when the regulations were adopted. These revisions are intended to implement the amendments to the Airport Noise and Capacity Act of 1990 and clarify existing regulations and FAA policy.

DATES: Comments must be submitted on or before August 9, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 28213, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 28213. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alan V. Trickey, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3496.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule 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 adopting the proposals in this notice are also invited. Substantive

comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28213." When the comment is received by the FAA, the postcard will be dated, time-stamped, and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Airport Noise and Capacity Act of 1990 (49 U.S.C. app. 2151 *et seq.*) (ANCA) placed a ban on the operation of Stage 2 airplanes with a maximum weight of more than 75,000 pounds in the contiguous United States after December 31, 1999. To achieve an organized transition to this goal, the FAA was charged with establishing a schedule of phased compliance with that requirement. On September 25, 1991, the FAA amended Subpart I of 14 CFR part 91 (part 91) to add new §§ 91.801(c) and 91.851 through 91.875 that implemented the Stage 2 nonaddition rules of the ANCA and adopted various transition criteria (56 FR 26433). The regulatory scheme

established in 1991 requires all operators of Stage 2 airplanes (including foreign air carriers and operators) to establish a starting base level of Stage 2 airplanes from which they will accomplish the required reduction. The regulations give operators a choice of how they will achieve this reduction, and require that each operator report its actions toward compliance on a yearly basis.

Neither the ANCA nor the implementing regulations affected the importation or operation of Stage 2 airplanes in the States of Alaska and Hawaii. On October 21, 1991, Congress amended Section 2157 of the ANCA to add a new subsection (i) that placed limits on the operation of Stage 2 airplanes in Hawaii. The amendment sought to prevent the proliferation of Stage 2 airplane noise in Hawaii by limiting the number of Stage 2 operations allowed between Hawaii and points outside the contiguous United States, and by restricting "turnaround" service within the State of Hawaii with Stage 2 airplanes. In effect, this amendment creates a kind of nonaddition rule for the State of Hawaii, although it differs significantly from the nonaddition rule that applies to Stage 2 airplanes eligible to operate in the contiguous United States.

Synopsis of the Proposal*Stage 2 Operations in Hawaii*

Since the ANCA was amended after the transition regulations were promulgated, the requirements of § 91.875 do not include the reporting of the information necessary for the FAA to ensure compliance with the statutory restrictions added by the 1991 amendment. This proposed rule would add a new paragraph to § 91.801 and add a new § 91.877 that would contain the reporting requirements for airplanes operated within the State of Hawaii or between the State of Hawaii and points outside the contiguous United States on and since November 5, 1990.

As proposed, each affected operator would need to report the number of Stage 2 airplanes it operated in either described operation on and since November 5, 1990, and any changes in the number since that time. This proposed reporting requirement is needed to ensure compliance with the 1991 amendment to ANCA. The specificity of the amendment and the limited nature of its provisions require more detailed reporting by certain operators than is currently required. Moreover, the applicability of current § 91.875 does not include some of the

operators from which the FAA needs the information described.

Other Stage 2 Operations

As currently written, § 91.857 applies to Stage 2 airplanes imported into a noncontiguous state, territory, or possession of the United States on or after November 5, 1990. That section was promulgated to provide a means by which airplanes purchased after the date of the statutory nonaddition rule could be included on the operations specifications of operators, but restricted from operations in the contiguous United States. Paragraph (b) of that section allows for these same airplanes to obtain a special flight authorization to enter the contiguous United States for maintenance.

Since the regulations were promulgated, the FAA found that the same restricted operations specification arrangement was the most effective means for some operators to comply with the phased compliance regulations. As an example, an operator that operates exclusively in Alaska is, by law, subject to the phased compliance regulations because it is a U.S. operator and could operate into the contiguous United States. However, because the phased transition rules do not apply to operations wholly within the State of Alaska, there is no reason to force such an operator to phase out any of its Stage 2 airplanes. Accordingly, such an operator may comply with the phased transition regulation by restricting the operation of certain airplanes to points outside the contiguous United States only. An airplane restricted in this manner would have a status similar to that of a Stage 2 airplane purchased after the date of the nonaddition rule, in that it would be eligible for operation only outside the contiguous United States. The same operational restriction could easily cover both situations.

Accordingly, the FAA is proposing a change to the introductory text of § 91.857 that would remove the reference to "imported" airplanes; the proposed revision would include a reference only to Stage 2 airplanes "operating between points outside the contiguous United States." This language is intended to include both "imported" Stage 2 airplanes covered by the nonaddition rule, and Stage 2 airplanes removed from operation in the contiguous United States as a means of complying with the phased transition regulations.

This change is consistent with guidance that the FAA has given operators since § 91.857 was promulgated in 1991. This change does not represent a change in policy toward

these airplanes, but seeks only to incorporate current agency practice into the regulations as experience with the phased transition regulations is gained. This clarification and the FAA guidance that has been disseminated is fully compatible with the provisions of ANCA and the phased transition regulations as originally promulgated.

Correction of New Entrant References

As part of the required transition to an all Stage 3 fleet, the Airport Noise and Capacity Act instructed the FAA to consider the impact of any regulations on a "new entry into the airline industry." In adopting the regulations, the FAA made special provisions for new entrant air carriers under § 91.867. In that regulation, and in the definition of new entrant in § 91.851, the FAA inadvertently included operators operating under 14 CFR parts 125 and 135 (part 125, part 135). The inclusion of each of these parts was in error. First, by definition, air carriers operate under 14 CFR parts 121, 129 or 135; there can be no air carriers certificated under part 125. Second, since the noise transition regulations affect only jet airplanes over 75,000 pounds, the aircraft size limitations of part 135 mean that there are no part 135 operators affected by the rules, and thus there can be no part 135 new entrants.

Accordingly, the FAA is proposing to eliminate the references to "new entrants" under parts 125 and 135 since, as explained above, such status is not possible given the limitations of the statute and those of parts 125 and 135. This elimination should not be construed as changing the applicability of the transition rules—all jet airplanes over 75,000 pounds remain subject to the transition and nonaddition rules, regardless of the part under which they are operated. The FAA does not anticipate any effect, positive or negative, on any operator as a result of this change since it is impossible for an operator to be a "new entrant air carrier" subject to the transition rules under either part 125 or 135.

Airplanes With Nonstandard Certificates

By its terms, the ANCA applies to—and requires the phaseout of—"any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels * * *." This definition does not distinguish between airplanes that operate under standard category airworthiness certificates, and those that operate under an experimental or other restricted category certificate. Since the

statute did not make the distinction, the regulations in § 91.801(c) apply to all jet airplanes over 75,000 pounds. Since the regulations were promulgated, the FAA has received inquiries concerning this applicability, particularly in the case of the phaseout of experimental airplanes used for research and development, and special purpose airplanes such as those used in firefighting. Accordingly, the FAA is seeking comment and information about the continuing coverage of airplanes that operate under nonstandard airworthiness certificates but are included in the applicability section of the phased transition rules. This same guidance has been given by the FAA since the oversight was brought to the agency's attention.

Paperwork Reduction Act

Information collection requirements currently contained in part 91 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2120-0553. Revised reporting and record keeping provisions resulting from this proposal are being submitted to OMB for approval as an amendment to the existing OMB approval for part 91.

Economic Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has preliminarily determined that this rule: (1) Would generate benefits that justify its costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. Since the impacts of the proposed change are relatively minor, this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

Costs

There are four new provisions of the proposed rule.

1. Stage 2 Operations in Hawaii

The current requirements of the ANCA do not include the reporting necessary for the FAA to ensure compliance with the statutory restrictions added by the 1991 amendment. This proposed rule would add a new paragraph to § 91.801 and add a new § 91.877 that would contain the reporting requirements for aircraft operated within the State of Hawaii or between the State of Hawaii and points outside the contiguous United States on and since November 5, 1990. As proposed, each affected operator would need to report the number of Stage 2 airplanes it operated in either described operation on or since November 5, 1990, and any changes in the number since that time. This proposed reporting requirement is needed to ensure compliance with the 1991 amendment to ANCA.

The FAA estimates that this provision would require for each carrier no more than two hours per year of a Flight Operations Manager's time to collect the necessary information. The FAA further estimates that there will be a one-time agency cost expended in the first year of implementation as a result of this proposed rule change. There are approximately 10 U.S. operators that fly Stage 2 airplanes in and out of Hawaii that are not presently required to report the needed information.

The FAA assumes that reporting the information required by this proposed action would be performed by a Flight Operations Manager at a loaded hourly wage (which includes benefits) of \$26.74. Two hours at this rate times 10 carriers yields the total annual cost of \$535.00 to affected carriers.

The FAA estimates that it will also take a total of two hours for the FAA to review and approve the initial information submitted. (Time spent in review thereafter will be insignificant because it will be included in regular reviews of reports.) Given a loaded hourly wage rate (which includes benefits) of \$38.87 for a government worker, GS-13 step 5, the FAA estimates that this provision will cost the FAA $\$38.87 \times 10 \times 2 = \777 dollars to process this information. The total annual cost of this provision is, therefore, \$1,312.

2. Other Stage 2 Operations

Currently § 91.857 applies to Stage 2 airplanes imported into a noncontiguous state, territory, or

possession of the United States on or after November 5, 1990. That section was promulgated to provide a means by which airplanes purchased after the date of the statutory nonaddition rule could be included on the operations specifications of operators, but restricted from operations in the contiguous United States. Paragraph (b) of that section allows operators to obtain a special flight authorization to enter these airplanes into the contiguous United States for the purpose of maintenance.

Since § 91.857 was promulgated, the FAA found that the same restricted operations specifications arrangement was the most effective means for some operators to comply with the phased compliance regulations. Accordingly, the FAA is proposing a change to the text of § 91.857 that would remove the reference to "imported" airplanes; the proposed revision would include a reference only to Stage 2 airplanes "operating between points outside the contiguous United States." This language is intended to include both Stage 2 airplanes covered by the nonaddition rule and Stage 2 airplanes removed from operations in the contiguous United States as a means of complying with the phased transition regulations.

This change does not represent a change in policy toward these airplanes, but incorporates current agency practice into the regulations as experience with the phased transition regulations is gained. There is, therefore, no cost associated with this provision.

3. Correction of New Entrant References

As part of the required transition to an all Stage 3 fleet, the Airport Noise and Capacity Act instructed the FAA to consider the impact of any regulations on a "new entry into the airline industry." In adopting the regulations, the FAA made special provisions for new entrant air carriers under § 91.867. In that regulation, and in the definition of new entrant in § 91.851, the FAA inadvertently included operators operating under parts 125 and 135. The inclusion of each of these parts was in error. As outlined in the synopsis of the proposal, air carriers operate under parts 121, 129 or 135; there can be no air carriers certificated under part 125. Also, since the noise transition regulations affect only jet airplanes over 75,000 pounds, the airplane size limitations of part 135 mean that there are no part 135 operators affected by the rules, and thus there can be no part 135 new entrants.

The FAA is proposing to eliminate the references to "new entrants" under part

125 and 135 since, as explained above, such status is not possible given the limitations of the statute and those of parts 125 and 135. This elimination should not be construed as changing the applicability of the transition rules. The FAA does not anticipate any effect on an operator as a result of this change since an operator cannot be a "new entrant air carrier" subject to the transition rules under either part 125 or 135. There are no costs associated with this proposed change.

4. Airplanes With Nonstandard Certificates

The current ANCA definition does not distinguish between airplanes that operate under standard category airworthiness certificates, and those that operate under an experimental or other restricted category certificate. Since the regulations were promulgated, the FAA has received inquiries concerning this applicability, the FAA has received inquiries concerning this applicability, particularly in the case of the phaseout of experimental airplanes used for research and development, and special purpose airplanes such as those used in firefighting. The FAA is seeking comment and information about the continuing coverage of airplanes that operate under nonstandard airworthiness certificates but are included in the applicability section of the phased transition rules. This request for information has no consequential costs associated with it.

Benefits

The ANCA, as amended, when properly implemented, will ensure that noise levels in Hawaii from Stage 2 airplanes will not exceed 1990 noise levels. This proposed rule would allow the FAA to obtain the information needed to enforce the ANCA, thereby giving the agency the ability to ensure implementation of the law, which in turn will ensure the ultimate benefit of controlled noise levels to be realized.

Environmental Analysis

This proposal would ensure implementation of the amended ANCA by adding a new § 91.877 that would contain new reporting requirements for Stage 2 operations conducted in the State of Hawaii. The proposed reporting requirement refines existing reporting requirements in part 91, and is not anticipated to have a significant effect on the quality of the human environment. Any environmental impact associated with this regulation is the result of the amendment to the statute made by Congress. This action,

the addition of a reporting requirement, in itself, has no environmental impact.

The other proposed amendments, the change to § 91.857 that acknowledges an acceptable means of compliance with the Stage 3 transition and the elimination of two drafting errors, also are not anticipated to have a significant effect on the quality of the human environment. These proposed changes do not in any way change the substantive effect of the transition regulations, but only reflect the practices of the FAA since the regulations were adopted in 1991.

Prior to issuing a final rule, the FAA will 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). Comments relating to any environmental impacts that might result from adopting this proposed rule are invited.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA; 5 USC 601 et seq.) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Small entities are independently owned and operated small businesses and small not-for-profit organizations. According to the FAA's Order on Regulatory Flexibility Criteria and Guidance, a small operator of airplanes for hire is one that owns, but does not necessarily operate, nine or fewer airplanes. The Order also defines a substantial number of small entities as a number that is not less than 11 and that is more than one-third of the small entities subject to the rule. The small entities that will be affected by this rule are the operators of Stage 2 civil subsonic airplanes with maximum weights of more than 75,000 pounds that operate in Hawaii.

The costs of this proposed rule are negligible. For this reason the FAA concludes that the proposed rule would not significantly affect a substantial number of small air carrier entities as defined in the FAA's Regulatory Flexibility Criteria and Guidance.

International Trade Impact Assessment

The proposed rule is expected to have little or no impact on trade opportunities of U.S. firms conducting business overseas or for foreign firms conducting business in the United

States. The proposed rule would impose the same requirements on both domestic air carriers operating under part 121, 125, or 135 of the regulations and foreign air carriers subject to part 129 of the regulations. The cost of compliance to foreign air carriers flying into the United States and domestic operators are similar and negligible. Therefore, it will not cause a competitive fare disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the United States.

Federalism Implications

The regulations proposed herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

The provisions in these proposed amendments to part 91 would result in no substantial costs or savings in terms of regulatory evaluation requirements. They would not result in an annual effect on the economy of \$100 million or more, a major increase in costs to consumers or others, or other significant adverse effects. In addition, this NPRM would have little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States. Accordingly, the FAA has determined that, if adopted, this proposed amendment: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a significant regulatory action under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Aircraft, Noise control, Reporting and recordkeeping requirements.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125, 2157, 2158; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

2. Section 91.801(c) is amended by removing the reference to "91.875" and adding the reference "91.877" in its place.

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

§ 91.801 Applicability: Relation to part 36.

* * * * *

(d) Section 91.877 prescribes reporting requirements that apply to any civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds operating within the State of Hawaii, or operating between the State of Hawaii and any point outside of the 48 contiguous United States and the District of Columbia, under this part or part 121, 125, 129, or 135 of this chapter on or after November 5, 1990.

4. Section 91.8551 is amended in the definition New entrant by revising the phrase "part 121, 125, 129, or 135" to read "part 121 or 129".

5. Section 91.857 is amended by revising the heading and introductory text to read as follows:

§ 91.857 Stage 2 operations outside of the 48 contiguous United States and authorizations for maintenance.

An operator of a Stage 2 airplane that is operating only between points outside the contiguous United States on or after November 5, 1990, shall—

* * * * *

6. Section 91.867(a)(1) is amended by revising the phrase "part 121, 125, or 135" to read "part 121".

7. A new § 91.877 is added to read as follows:

§ 91.877 Annual reporting of Hawaiian operations.

(a) Each operator subject to § 91.865 or § 91.867 that conducts operations within the State of Hawaii, or between the State of Hawaii and a point outside the contiguous United States, on or since November 5, 1990, shall include in its annual report the information described in paragraph (c) of this section.

(b) Each operator not subject to § 91.865 or § 91.867 that conducts operations within the State of Hawaii, or between the State of Hawaii and a point outside the contiguous United States, on or since November 5, 1990, shall submit an annual report to the FAA, Office of Environment and Energy, on its

compliance with the Hawaiian operations provisions of section 2157(i) of the Airport Noise and Capacity Act of 1990, 49 U.S.C. 47528. Such reports shall be submitted no later than 45 days after the end of a calendar year. All progress reports must provide the information through the end of the calendar year, be certified by the operator as true and complete (under penalty of 18 U.S.C. 1001), and include the following information—

(1) The name and address of the operator;

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

(3) The information specified in paragraph (c) of this section.

(c) The following information must be included in reports filed pursuant to this section—

(1) For operations conducted within the State of Hawaii—

(i) The number of Stage 2 airplanes used to conduct such operations on November 5, 1990;

(ii) Any change to that number during the calendar year being reported, including the date of such change; and

(iii) An air carrier that provided service within the State of Hawaii (i.e., "turnaround service") on November 5, 1990, may include in the number reported under paragraph (c)(1)(i) of this section all Stage 2 airplanes with a maximum certificated weight of more than 75,000 pounds that were owned or leased by the air carrier on November 5, 1990, regardless of whether such

airplanes were operated by that carrier on that date.

(2) For operations conducted between the State of Hawaii and a point outside the contiguous United States—

(i) the number of Stage 2 airplanes used to conduct such operations on November 5, 1990; and

(ii) Any change to that number during the calendar year being reported, including the date of such change.

(d) Reports or amended reports for years predating this regulation are required to be filed by 90 days after publication of the final rule.

Issued in Washington, DC on May 2, 1995.

James D. Erickson,

Director, Office of Environment and Energy.

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