

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2002-12771; Amendment No. 91-276]

RIN 2120-AH41

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule removes outdated language, revises several sections, and adds one new section to the noise operating regulations. Some revisions are a result of statutory changes to the Airport Noise and Capacity Act. New requirements define specific filing procedures and criteria for special flight authorizations. These revisions will make the noise operating regulations consistent with statutory provisions.

DATES: This final rule is effective July 15, 2002. Comments must be received on or before August 14, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-12771 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The docket Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Laurette Fisher, AEE-100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3561; facsimile (202) 267-5594.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this final rule is being adopted without prior notice and prior public comment, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within the DOT should 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 environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-2002." The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

- (1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).
- (2) On the search page type in the last five digits of the Docket number how at the beginning of this document. Click on "search."
- (3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at <http://www.faa.gov/avr/armhome.htm> or the Government Printing Office's Web page

at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at our site, <http://www.gov/avr/arm/sbrefa.htm>. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

The Airport Noise and Capacity Act of 1990 (49 U.S.C. 47528 *et seq.*) (ANCA), prohibits the operation of Stage 2 civil subsonic turbojet airplanes with a maximum weight of more than 75,000 pounds in the contiguous United States after December 31, 1999. The ANCA also required the Federal Aviation Administration (FAA) to establish by regulation a schedule of phased compliance that would eliminate Stage 2 operations by the final compliance date.

Those regulations were promulgated in 1991, and codified at 14 CFR 91.851-91.877. In general, the regulations required each operator of Stage 2 airplanes to progressively reduce the number of Stage 2 airplanes it operates incrementally by 25% by the end of 1994, 1996, and 1998, respectively. In the alternative, operators could choose to operate a fleet of airplanes that was increasingly Stage 3: 55% after 1994, 65% after 1996, and 75% after 1998. Under either option, except as provided in the ANCA, no Stage 2 airplane has been allowed to operate in the contiguous United States after December 31, 1999.

On November 29, 1999, ANCA was amended. The prohibition on revenue operation of Stage 2 airplanes after December 31, 1999, remains in effect. The amended law permits certain nonrevenue Stage 2 operations to occur after December 31, 1999. Specifically, any operator of a Stage 2 airplane over

75,000 pounds may operate that airplane in the contiguous United States only for the following purposes:

- Sell, lease, or scrap the airplane.
- Obtain modifications to meet Stage 3 noise levels.
- Obtain scheduled heavy maintenance or significant modifications.
- Deliver the airplane to a lessee or return it to a lessor.
- Park or store the airplane.
- Prepare the airplane for any of these events.

On December 17, 1999 (64 FR 70571), the FAA published a notice of these statutory changes. As part of that notice, the FAA instructed operators how to apply for special flight authorizations.

Further Amendments to ANCA

The original language of ANCA did not allow foreign air carriers to apply for a waiver from the Stage 2 final compliance requirement. On April 5, 2000, ANCA was again amended by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (commonly known as AIR 21). Section 721(d) of AIR 21, "Waivers For Aircraft Not Complying With Stage 3 Noise Levels," allowed foreign air carriers, for a limited time, to apply for a waiver from the Stage 3 aircraft requirement of 49 U.S.C. 47528(a). The amended statutory provision stated that a foreign air carrier had until the 15th day following the date of enactment of AIR 21 to file an application for a waiver; the deadline was April 20, 2000.

Section-by-Section Analysis

The FAA is amending its regulations consistent with Public Law 106-113 and § 721(d) of AIR 21. The following is an explanation of the changes to each affected section of the regulations.

PART 91 SUBPART I—OPERATING NOISE LIMITS

Section 91.801(c) Applicability: Relation to Part 36

This section applies to any civil subsonic turbojet airplane with a maximum certificated weight of more than 75,000 pounds. The amendment to ANCA inserted the phrase "(for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator)" after "civil subsonic turbojet." The effect of the amendment and the changes to paragraph (c) of § 91.801 is to limit applicability of these regulations to U.S.-registered civil subsonic turbojet for which the Administrator has issued an airworthiness certificate other than an experimental certificate. This change

makes the current regulation consistent with the amended ANCA.

The original text of ANCA places limits on the operation of airplanes "with a maximum weight of more than 75,000 pounds" That language is not specific given the number of aircraft weights that may be recorded for an individual airplane. Since the regulations were adopted in 1991, the FAA has considered this weight to be the maximum takeoff weight of the airplane, which is recognized throughout the industry. Accordingly, the FAA is adding the term "takeoff" to section 91.801(c) to codify which weight is to be used in referring to the noise operating regulations. No operational changes or changes in aircraft status will result from this addition because the FAA has always used maximum takeoff weight in determining whether an airplane was subject to the law and these regulations. The change is intended to eliminate any future questions or remaining confusion about which airplane weight will be used.

Section 91.803(b) Part 125 Operators: Designation of Applicable Regulations

This paragraph is amended to remove references to other sections that are removed.

Section 91.807 Phased Compliance Under Parts 121, 125, and 135: Subsonic Airplanes

This section sets out the compliance schedule for the elimination of Stage 1 airplanes. The text is removed since the requirements no longer apply to any operator. The section number is reserved.

Section 91.809 Replacement Airplanes

This section sets out the planes for replacing Stage 1 airplanes. The text is removed since the requirements no longer apply any operator. The section number is reserved.

Section 91.811 Service to Small Communities Exemption: Two-Engine, Subsonic Airplanes

This section provided a basis for exemption for the operation of certain Stage 1 airplanes. The text is removed since the requirements no longer apply to any operator. The section number is reserved.

Section 91.813 Compliance Plans and Status: U.S. Operations of Subsonic Airplanes

This section sets out the requirements for compliance plans for the elimination of Stage 1 airplanes. The text is removed since the requirements no longer apply

to any operator. The section number is reserved.

Section 91.857 Stage 2 Operations Outside of the 48 Contiguous United States, and Authorization for Maintenance

Section 91.857(b) allowed operators of Stage 2 airplanes that legally operated their airplanes outside the contiguous United States to obtain a special flight authorization to bring those airplanes into the contiguous United States for maintenance. The FAA's authority to allow these flights expired as of December 31, 1999. The reference to authorization for maintenance is removed from the section title, and the text of § 91.857(b) is deleted since the authorizations are no longer available. The paragraph (a) designation is also removed because the remaining text is a single paragraph.

New Section 91.858 Special Flight Authorization for Non-Revenue Stage 2 Operations

This is a new section on special flight authorizations for non-revenue Stage 2 operations. These authorizations were provided for by the amendment to ANCA in November 1999, described earlier in this document. The information specified in this section was published in the **Federal Register** on December 17, 1999. Adoption of this information into the current regulations makes them consistent with the amended ANCA.

Section 91.859 Modification To Meet Stage 3 Noise Levels

The text of this section is removed because the November 1999 change to ANCA included Stage 3 modification as one of the bases for a special flight authorization.

Section 91.873 Waivers From Final Compliance

The FAA is making two changes to § 91.873 in this final rule. One change revises § 91.873(a) by adding the words "or a foreign air carrier" after the words "U.S. air carrier." The other change revises § 91.873(b) by adding the date of application for a foreign air carrier. In the case of a foreign air carrier, AIR 21 required that the application be filed by the 15th day following the date of enactment of the law; that date was April 20, 2000. To avoid confusion, the FAA decided to incorporate these two changes to make the regulations consistent with the statutory provisions of AIR 21 passed on April 5, 2000.

Paperwork Reduction Act

Information collection requirements contained in 14 CFR part 91 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB control number 2120-0652. There are no new requirements for information collection associated with this amendment.

Good Cause for Immediate Adoption

When Congress amended ANCA in November 1999, it stated that the regulations were considered to be modified where they conflicted with any new statutory provision (Public Law 106-113). In an effort to distribute this information to the affected public, the FAA published a notice of these changes on December 17, 1999, as described earlier, and stated that this change to the current regulations would be made.

Similarly, the April 2000 changes to ANCA by AIR 21 effectively changed the affected regulations at that time.

In addition to the statutory changes described, the FAA is removing outdated portions of text in the noise operating regulations. Since none of these changes has any effect on current operators, the FAA finds that prior notice and public comments are unnecessary.

Although this final rule is being adopted without prior notice and public comment, interested persons may submit comments in duplicate to the address listed under the **ADDRESSES** caption above. This final rule may be amended in response to such comments.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify its costs. Our assessment of this final rule indicates that its economic impact is negligible. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory impact analysis." Similarly, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory and Policies and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is negligible.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency must propose or adopt a regulation only upon a reasonable determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more, in any one year (adjusted for inflation).

However, for regulations with an expected minimal impact the above-specified analyses are not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full evaluation, a statement to that effect and the basis for it is included in proposed regulation.

Since this final rule will remove and reserve sections concerning outdated Stage 1 requirements and revise other sections of the noise regulations, the expected cost impact will be negligible. The new section 91.858 on special flight authorizations allows operators to fly Stage 2 airplanes into the contiguous United States for specific purposes that would otherwise be prohibited. Since an operator may choose to apply for a special flight authorization if needed, the FAA has determined that his rule allows some cost savings to certain foreign operators while imposing only negligible costs on society at large. This rule is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; will not have a significant impact on a substantial number of small entities; reduces

barriers to international trade; and does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the final rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the act.

However, if an agency determines that the final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

In view of the negligible cost impact of the rule, the FAA has determined that this final rule will have no significant economic impact on a substantial number of small entities. Consequently, the FAA certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be used as the basis for U.S. standards. In addition, consistent with this Administration's belief in the general superiority and desirability of free trade, it is the policy

of this Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will reduce costs for some international entities.

Unfunded Mandated Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on States, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a 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, the FAA has determined that this final rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94-163, amended (42 U.S.C. 6362) and FAA Order 1050.1. It

has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Aircraft, Noise control, Reporting and record keeping requirements.

The Amendments

In consideration of the foregoing the Federal Aviation Administration amends part 91 of Chapter I of Title 14 Code of Federal Regulations 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. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506, 46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat 1180).

§ 91.801 [Amended]

2. Amend § 91.801 by revising paragraph (c) to read as follows:

§ 91.801 Applicability: Relation to part 36.
* * * * *

(c) Sections 91.851 through 91.877 of this subpart prescribe operating noise limits and related requirements that apply to any civil subsonic turbojet airplane (for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator) with a maximum certificated takeoff weight of more than 75,000 pounds operating to or from an airport in the 48 contiguous United States and the District of Columbia under this part, parts 121, 125, 129, or 135 of this chapter on and after September 25, 1991.

§ 91.803 [Amended]

3. Amend § 91.803 by removing the phrase "91.809, 91.811 and 91.813" in paragraph (b).

§ 91.807 [Removed and Reserved]

4. Section 91.807 is removed and reserved.

§ 91.809 [Removed and Reserved]

5. Section 91.809 is removed and reserved.

§ 91.811 [Removed and Reserved]

6. 91.811 removed and reserved.

§ 91.813 [Removed and Reserved]

7. 91.813 is removed and reserved.

§ 91.857 [Revised]

8. Revise § 91.857 to read as follows:

§ 91.857 Stage 2 operations outside of the 48 contiguous United States.

An operator of a Stage 2 airplane that is operating only between points outside the contiguous United States on or after November 5, 1990, must include in its operations specifications a statement that such airplane may not be used to provide air transportation to or from any airport in the contiguous United States.

9. Add § 91.858 to read as follows:

§ 91.858 Special flight authorizations for non-revenue Stage 2 operations.

(a) After December 31, 1999, any operator of a Stage 2 airplane over 75,000 pounds may operate that airplane in nonrevenue service in the contiguous United States only for the following purposes:

- (1) Sell, lease, or scrap the airplane;
- (2) Obtain modifications to meet Stage 3 noise levels;
- (3) Obtain scheduled heavy maintenance or significant modifications;
- (4) Deliver the airplane to a lessee or return it to a lessor;
- (5) Park or store the airplane; and
- (6) Prepare the airplane for any of the purposes listed in paragraph (a)(1) through (a)(5) of this section.

(b) An operator of a Stage 2 airplane that needs to operate in the contiguous United States for any of the purposes listed above may apply to FAA's Office of Environment and Energy for a special flight authorization. The applicant must file in advance. Applications are due 30 days in advance of the planned flight and must provide the information necessary for the FAA to determine that the planned flight is within the limits prescribed in the law.

§ 91.859 [Removed and Reserved]

10. Section 91.859 is removed and reserved.

§ 91.873 [Amended]

11. Amend § 91.873 by revising paragraphs (a) and (b) to read as follows:

§ 91.873 Waivers from final compliance.

(a) A U.S. air carrier or a foreign air carrier may apply for a waiver from the prohibition contained in § 91.853 of this part for its remaining Stage 2 airplanes, provided that, by July 1, 1999, at least 85 percent of the airplanes used by the carrier to provide service to or from an airport in the contiguous United States will comply with the Stage 3 noise levels.

(b) An application for the waiver described in paragraph (a) of this section must be filed with the Secretary of Transportation no later than January 1, 1999, or, in the case of a foreign air

carrier, no later than April 20, 2000.
Such application must include a plan
with firm orders for replacing or
modifying all airplanes to comply with

Stage 3 noise levels at the earliest
practicable time.
* * * * *

Issued in Washington, DC on July 10, 2002.
Jane F. Garvey,
Administrator.
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