DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 28213; Amdt. No. 91–252]

RIN 2120–AE83

Stage 2 Airplane Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document revises the airplane operating rules to provide reporting requirements for air carriers and foreign air carriers operating Stage 2 airplanes in Hawaii. These revisions require any air carrier 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 identifies certain operations of aircraft (otherwise restricted from operation in the contiguous United States) that are allowed, and corrects an oversight made when the regulations were adopted. These revisions will implement the amendments to the law and clarify existing regulations and FAA policy.

EFFECTIVE DATES: January 15, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette V. Fisher, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3561.

SUPPLEMENTARY INFORMATION:

Background

The Airport Noise and Capacity Act of 1990 (49 U.S.C. 47521 *et seg.*) (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 phased 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 NCA 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) (now 49 U.S.C. 47528) 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 using Stage 2 airplanes. In effect, this amendment creates a kind of operational nonaddition rule for the State of Hawaii; however, this statutory provision differs significantly from the nonaddition rule that applies to Stage 2 airplanes eligible to operate in the contiguous United States and the two should not be confused.

Discussion of Comments

On May 11, 1995, the FAA published an NPRM (60 FR 25554) that proposed amending the reporting requirements for certain operators of Stage 2 airplanes in Hawaii. Three comments were received in response to the NPRM.

The State of Hawaii Department of Transportation commented and recommended that operators submit the required reports to Hawaii's Department of Transportation in addition to the FAA. The FAA disagrees. First, the FAA does not have the authority to require certain operators to submit annual reports to an individual State. Second, the reports will contain only the number of airplanes operated by reporting operators to ensure compliance with the statute; they will not contain the number of operations nor the locations of those operations of Stage 2 airplanes within the State of Hawaii, as the commenter implies it needs. Accordingly, for those reasons, the filing of the reports to the State will not be mandated by this rulemaking.

The second commenter, a major air carrier serving Hawaii, comments through its industry association and recommends that the rule language in proposed §§ 91.877(c) (1) and (2) be clarified to reflect that the number of Stage 2 airplanes used to conduct Hawaiian operations on November 5, 1990, means the number of Stage 2 airplanes in the operator's fleet that were used in Hawaiian operations at that time, rather than the number of airplanes actually flown on the single day set out in the statute.

The FAA agrees with the comment that the law did not necessarily intend to restrict the number of Stage 2 airplanes to the number that actually operated in service to Hawaii on November 5, 1990. However, the language adopted in this final rule will be changed only slightly. The FAA is sensitive to the fact that general language describing Stage 2 airplanes could lead to the number reported being the entire fleet of a carrier's Stage 2 airplanes, regardless of whether all of these airplanes were regularly used in such service. This was clearly not the intent of the 1991 legislation. To include all of the Stage 2 airplanes in the fleet of a carrier that serves Hawaii would obviate the intent of the restriction. Accordingly, rather that the proposed language ''Stage 2 airplanes used to conduct such operations on November 5, 1990,'' the final rule requires a report of the number of ''Stage 2 airplanes used to conduct such operations as of November 5, 1990.'' This change is intended to allow affected carriers to provide the FAA with the number of Stage 2 airplanes that were usually available for the indicated service *as of* November 5, 1990. The FAA may require reporting carriers to justify the number claimed under this provision, especially if the number is adjusted for seasonal or other schedule variation.

The commenter also states that the term ''turnaround service'' is defined in the legislation as a flight between two or more points within the State of Hawaii, and indicates that this language could be read to mean that inter-island segments of mainland-to-Hawaii service should be reported as turnaround service. The commenter states that this does not appear to be the intent of Congress in the legislation, and that the proposed reporting requirement should include the word ''exclusively'' to indicate that the operations reported as turnaround service are not segments of mainland-to-Hawaii service.

The FAA disagrees that a change to the proposed regulation is necessary. The Hawaiian operations amendment restricts the number of Stage 2 airplanes that conduct turnaround service in the State of Hawaii, as indicated by the commenter. The original language of the legislation described turnaround service as ''the operation of a flight between two or more points, all of which are within the State of Hawaii.'' The Senate Report that accompanied the legislation indicated that it covered ''the operation

of local flights between two Hawaii cities and/or counties which also serve as the origin and destination for those flights.'' The comment's suggestion that the regulation should read ''operations conducted *exclusively* within the State of Hawaii'' does not appear to add clarity to the proposed regulation. The commenter has interpreted the statute correctly, in that inter-island segments of flights that begin outside the state are not considered turnaround service under the law. The FAA has determined that adding a term that does not appear in the legislation is unnecessary, a conclusion bolstered by the fact that the commenter interpreted the law correctly without the term.

The commenter also suggests that the new required and amended reports be submitted concurrently with the next annual report of an air carrier, since the proposed 90 days may not be sufficient to gather the necessary information. The FAA agrees, and this change is reflected in the text of the final rule.

The third commenter supported the rule as proposed.

The FAA received no comments on the other two changes proposed in the NPRM. One proposal was to eliminate the references to parts 125 and 135 in the definition of new entrant in § 91.851, and in the special provisions for new entrant air carriers under § 91.867. The FAA inadvertently included operators operating under 14 CFR parts 125 and 135 in the original regulation. The inclusion of each of these parts was in error since, by definition, there can be no new entrant air carriers operating under either of these parts. No comments were received on this proposal, and it is adopted as proposed.

The other proposal was to revise § 91.857 to remove the reference to ''imported'' airplanes. The proposed rule would refer only to Stage 2 airplanes ''operating between points outside the contiguous United States .'' This section was always intended to apply to both ''imported'' Stage 2 airplanes covered by the nonaddition rule but operated outside the contiguous United States, and Stage 2 airplanes removed from the operation in the contiguous United States as a means of complying with the phased transition regulations. No comments were received on this proposal, and it is adopted as proposed.

In the NPRM, the FAA also solicited comments about the continuing coverage of airplanes that operate under nonstandard airworthiness certificates but are included in the applicability section of the phased transition rules. As stated in the NPRM, the underlying statute does not distinguish between airplanes that operate under standard category airworthiness certificates, and those that operate under an experimental or other restricted category certificate. No comments concerning the effect of this provision were received. Accordingly, there is no change to the section of the regulations. The regulations will continue to require that by December 31, 1999, the operator of *any* civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds must comply with the Stage 3 noise requirements contained in 14 CFR part 36, regardless of the category of airworthiness certificate under which a covered airplane operates. Similarly, operators of these airplanes must continue to comply with the phased transition requirements of part 91 as well.

Other Changes

In reviewing the NPRM, the FAA determined that the proposed rule language regarding Hawaiian operation reporting was overly broad, referring to ''operators'' rather than ''air carriers,'' as provided by the law. That reference has been corrected in the final rule to indicate that only air carriers and foreign air carriers subject to the restriction in the law need report their Hawaiian operations under § 91.877. This correction does not affect the costs detailed in the regulatory evaluation.

Also in reviewing the NPRM, the FAA determined that the language of the proposed reporting requirement may not have clearly distinguished that there are three types of flights to report—those between the contiguous U.S. and the State of Hawaii, those between the State of Hawaii and a point outside the contiguous U.S., and turnaround service only between the islands. All three of these flights are limited by law, and the FAA always intended that all three be reported. Accordingly, the language of the final rule has been changed to clarify this distinction. This clarification does not affect the costs detailed in the regulatory evaluation.

Finally, the applicability of § 91.851, the definitions applicable to the transition regulations, is being revised to reference § 91.877, which is being added by this rule. This revision does not change the scope of this rule.

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 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2120–0553. An amendment of that approval is being submitted to OMB to include the small additional burden associated with this final rule.

Economic Summary

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 determined that this rule: (1) Will generate benefits that justify its costs and is not ''a significant regulatory action'' as defined in Executive Order 12866; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. Since the impacts of the change are relatively minor, this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

Costs

There are three new provisions of the rule.

1. Stage 2 Operations in Hawaii

The current requirements of the law restricting Stage 2 airplane operations in Hawaii do not include the reporting necessary for the FAA to ensure compliance with the statutory restrictions added by the 1991 amendment. This rule will add a new paragraph to § 91.801 and add a new § 91.877 that will 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. Each affected operator will need to report the number of Stage 2 airplanes it operated in either described operation since November 5, 1990, and any changes in the number since that time. This reporting requirement is needed to ensure compliance with the 1991 amendment to ANCA.

The FAA estimates that this provision will 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 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 action will 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 $777 ($38.87 × 10 × 3) 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 bring 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 specification arrangement was the most effective means for some operators to comply with the phased compliance regulations. Accordingly, the FAA is revising the text of § 91.857 to remove the reference to ''imported'' airplanes; the revision will 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. 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 FAA was required 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 final rule synopsis, air carriers operate under part 121, 129, or 135; no air carriers are 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 eliminating 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. There are no costs associated with this change.

Benefits

The statute contains a provision that limits the number of Stage 2 airplanes that operate exclusively within the State of Hawaii, or between Hawaii and a point outside the contiguous United States. The benefits associated with the reduction in noise are attributed to the law itself. No direct benefits of the reduction in noise levels can be attributed to this rule making. Without this rule the FAA will not have the information necessary to enforce the law.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA; 5 U.S.C. 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 annual costs of this rule are negligible ($535 per operator). For this reason the FAA concludes that the final rule does 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

The final 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 rule will impose the same requirements on both domestic air carriers operating under part 121 and foreign air carriers subject to part 129. The costs 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 disadvantage for U.S. carriers operating overseas or for foreign carriers operating in the Untied States.

Federalism Implications

This regulation 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.

Environmental Analysis

This rule will ensure implementation of the law by adding a new section § 91.877 that will contain new reporting requirements for operators conducting Stage 2 operations in the State of Hawaii. The new reporting requirement refines existing reporting requirements in part 91, and will not 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 change to § 91.857 that acknowledges an acceptable means of compliance with the Stage 3 transition, and the elimination of two drafting errors, also will not have a significant effect on the quality of the human environment. This rule does not in any way change the substantive effect of the transition regulations, but only reflects the practices of the FAA since the regulations were adopted in 1991.

Conclusion

These amendments to part 91 will result in no substantial costs or savings. They will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs to consumers or others, nor have other significant adverse effects. In addition, this rule will 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 these amendments: (1) Are not a significant regulatory action under Executive Order 12866; (2) are 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 Amendment

Accordingly, the Federal Aviation Administration amends 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. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

§ 91.801 [Amended]

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 operated by an air carrier or foreign air carrier between the contiguous United States and the State of Hawaii, between the State of Hawaii and any point outside of the 48 contiguous United States, or between the islands of Hawaii in turnaround service, under part 121 or 129 of this chapter on or after November 5, 1990.

§ 91.851 [Amended]

4. The introductory text of § 91.851 is amended by removing the reference ''91.875'' and by adding the reference ''91.877'' in its place.

§ 91.851 [Amended]

5. Section 91.851 is amended in the definition of ''New entrant'' by revising the phrase ''part 121, 125, 129 or 135'' to read ''part 121 or 129''.

6. 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 authorization 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—

* * * * *

§ 91.867 [Amended]

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

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

§ 91.877 Annual reporting of Hawaiian operations.

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

(b) Each air carrier or foreign air carrier not subject to § 91.865 or § 91.867 of this part that conducts operations between the contiguous U.S. and the State of Hawaii, between the State of Hawaii and any point outside of the contiguous United States, or between the islands of Hawaii in turnaround service, 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 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 air carrier or foreign air carrier;

(2) The name, title, and telephone number of the person designated by the air carrier or foreign air carrier 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 between the contiguous United States and the State of Hawaii—

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

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

(2) For air carriers that conduct inter-island turnaround service in the State of Hawaii—

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

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

(iii) For an air carrier that provided inter-island trunaround service within the state of Hawaii on November 5, 1990, the number reported under paragraph (c)(2)(i) of this section may include all Stage 2 airplanes with a maximum certificated takeoff 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 air carrier or foreign air carrier on that date.

(3) 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 as of 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 concurrently with the next annual report.

Issued in Washington, DC, on November 21, 1996.

Linda Hall Daschle,

Acting Administrator.

[FR Doc. 31873 Filed 12–13–96; 8:45 am]

BILLING CODE 4910–13–M