

persons to show cause why it should not issue an order (1) finding Pro Air, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in scheduled interstate passenger air transportation, subject to conditions.

DATES: Persons wishing to file objections should do so no later than August 29, 1996.

ADDRESSES: Objections and answers to objections should be filed in Docket OST-96-1075 and addressed to the Documentary Services Division (C-55, Room PL-401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366-9721.

Dated: August 14, 1996.

Charles A. Hunnicutt,
Assistant Secretary for Aviation and International Affairs.

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BILLING CODE 4910-62-P

Federal Aviation Administration

[Docket No. 28661]

Procedures for Processing Petitions for Interim Compliance Waivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This document presents a review of the procedures and information necessary for an operator of a Stage 2 noise level airplane subject to the phaseout regulations, resulting from the Airport Noise and Capacity Act of 1990, to submit a request for a compliance waiver. As a result of its experience preceding the first interim Stage 2 phaseout compliance date, December 31, 1994, the Federal Aviation Administration (FAA) reminds all affected operators of the procedures for applying for interim compliance waivers. This document also serves as a reminder to operators that as of March 14, 1995, new compliance arrangements that rely on sharing Stage 3 airplanes for noise compliance purposes by placing them on the operators specifications of more than one operator are prohibited, and that existing share arrangements may not be used for compliance with the December 31, 1996, requirements.

FOR FURTHER INFORMATION CONTACT:

Mr. William W. Albee, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3553, facsimile (202) 267-5594.

SUPPLEMENTARY INFORMATION:

Background

Sections 91.865 and 91.867 of 14 CFR each require that as of December 31, 1996, an operator of Stage 2 airplanes either reduce the number of Stage 2 airplanes it operates by 50% from its base level, achieve a fleet mix of airplanes that is 65% Stage 3 airplanes, or in the case of a new entrant, achieve a fleet mix that is 50% Stage 3 airplanes. Section 91.871 allows operators to request waivers from interim compliance dates in limited circumstances. In order to facilitate compliance with the December 31, 1996, requirement, the FAA is summarizing the regulatory requirements for waiver requests from the Stage 3 transition regulations.

Filing Requests

As stated in § 91.871, applications for waivers must be filed at least 120 days prior to the compliance date from which the waiver is requested. This means that applications must be filed no later than Tuesday, September 3, 1996, to ensure that they will be considered before the December 31, 1996, compliance date.

Each petition for an interim compliance waiver will be reviewed to determine whether it meets the basic criteria listed 14 CFR 91.871. If the criteria are not met, the petitioner will receive a letter indicating that all of the required information has not been submitted. Petitioners will have an opportunity to submit missing information before any disposition is final.

Criteria (14 CFR 91.871)

All applications for a waiver must contain all of the following:

1. The operator's plan to achieve interim and final compliance;
2. An explanation of the operator's efforts to date to achieve compliance; and
3. Evidence or other information showing that a grant of the requested waiver is in the public interest.

In addition to the three criteria listed above, each petitioner must also explain why compliance with the December 31, 1996, requirement would be at least one of the following:

1. Financially onerous;
2. Physically impossible;
3. Technologically infeasible; or

4. Have an adverse effect either on competition or service to small communities.

Scope of Request

Each waiver will be considered only for the airplanes operated by the petitioner on the date the petition was submitted to the FAA. Operators are expected to have submitted viable compliance plans and abided by them. The FAA's analysis of any petition will take into account the total circumstances of the operator, including all actions taken up to the date of the petition.

Publication

Upon completion of the review and determination that the petition is complete in accordance with the criteria described above, a summary of the petition will be published in the Federal Register for public comment for a minimum of 14 days. A docket will be opened that contains the petition, any other pertinent information, and any comments received.

Response

After the close of the comment period, the Office of Environment and Energy (AEE) will analyze each request and draft a response that contains a narrative analysis of each required element. If the results of the analysis show that the petitioner has met the criteria, AEE will prepare documentation to grant the petition for waiver. If the analysis shows that the petitioner has failed to meet the criteria, AEE will prepare documentation to deny the petition. Part of a request may also be granted at the agency's discretion, depending on the circumstances. A copy of the approval or denial document will be placed in the docket, and it will be made available for public inspection.

Length of Waiver

Any waiver granted will be for the shortest possible time as required by the circumstances presented by the petitioner and the findings of the FAA. If the petitioner cannot achieve compliance within the time frame provided in a waiver, the petitioner must submit a new petition that will be evaluated under the same criteria as the original petition. New petitions that fail to provide more information than the original will be denied.

Summary of 1994 Interim Waiver Denials

Ten operators petitioned the FAA for interim compliance waivers in 1994; seven petitions were denied and three were withdrawn. For operators that may

be contemplating applying for a waiver from the 1996 compliance date, the following summaries of the 1994 denials are provided to illustrate the FAA's analysis of such requests for compliance with the Stage 3 transition regulations.

No. 1 petitioner: By petition dated August 29, 1994, Docket No. 27894, the petitioner petitioned the FAA for a waiver that would allow it to import Stage 2 airplanes from foreign markets, and begin and continue operation with an all-Stage 2 fleet beyond the interim compliance date of December 31, 1994. At the time of the waiver petition, it did not own or operate any airplanes.

Denial of Waiver: It is FAA policy to consider for the possibility of waiver only those airplanes in operation by an operator on the date of the petition. In this instance, the petitioner did not have any airplanes in operation. It is also FAA policy that no prospective relief be granted. Since the petitioner had not yet achieved FAA certification to operate, it was not yet operating under the provisions of § 91.867 to be considered a new entrant or to ask relief from that regulation.

No. 2 petitioner: By petition dated September 1, 1994, Docket No. 27899, the petitioner petitioned the FAA for a waiver that would allow it to operate an all-Stage 2 fleet until June 30, 1995.

The petitioner began service in June 1994 flying passenger charters; it began scheduled passenger service in early October 1994. At the time it petitioned, the petitioner was operating two leased Stage 2 Boeing 737-200 airplanes. It planned to acquire two more Stage 2 737-200 airplanes in late 1994, and one more in the spring of 1995. Under § 91.867, the addition of the two airplanes in late 1994 would require one of the resulting total of four airplanes in its fleet to be a Stage 3 airplane after December 31, 1994. The petitioner's plans to acquire the described Stage 2 airplanes led to its waiver request.

Denial of Waiver: It is FAA policy to consider for the possibility of waiver only those airplanes in operation by an operator on the date of the petition. In this instance, the petitioner had not yet leased the airplanes for which it requested a waiver. Also, the petitioner submitted no information as to why its current business plan did not take into account the upcoming compliance date without needing a waiver. An operator must plan to achieve compliance without reliance on a waiver in order for FAA to consider that a viable plan was made but could not be adhered to.

No. 3 petitioner: By letter dated August 30, 1994, Docket No. 27888, the petitioner petitioned the FAA for a waiver that would allow it to operate a

fleet of six Stage 2 airplanes until December 31, 1996.

The petitioner is a foreign operator of the Stage 2 AN-124 airplane, and at the same time the waiver was submitted, the petitioner was operating a fleet of six of these airplanes on its U.S. operations specifications, conducting 25 to 50 charter flights per year to the U.S. The petitioner is a new entrant that received its authority to operate in the U.S. on May 28, 1993. The petitioner would have been eligible to operate three AN-124 airplanes past the December 31, 1994, compliance date without a waiver. If the petitioner wanted to continue operating all six of its AN-124 airplanes past the December 31, 1994, compliance date, it needed to add one Stage 3 airplane to its U.S. operations specifications to obtain the proper fleet mix for a new entrant under § 91.867. The petitioner otherwise had to remove three of the Stage 2 AN-124 airplanes from its U.S. operations specifications.

Denial of Waiver: The petitioner stated that a waiver was in the public interest because of the unique cargo capability of the AN-124 airplane and its operation as an ad hoc charter rather than regularly scheduled service. The FAA determined that a grant of the petitioner's request for a waiver would not be in the public interest. The FAA found that since the petitioner did not show that, given its record of use, specialized shipping needs could not be met with three rather than six airplanes, and since they had the ability to change the individual airplanes that appeared on the operations specifications at any given time, there was no public benefit to be gained by granting a waiver to an operator for the purpose of making its operations scheduling easier. Further, the petitioner did not show that it ever had a plan to meet the December 1994 compliance date, or that it made any effort to do so. Evidence of a viable compliance plan and a good faith effort to achieve compliance are considered critical elements of any request for a waiver, as indicated by the presence of these criteria in § 91.871(c), the criteria that all applicants must meet. Since the FAA had no compliance plan information on file and the petitioner did not submit any with its application for waiver, the FAA concluded that the petitioner had never developed any plan to comply with the December 1994 compliance date.

No. 4 petitioner: By petition dated September 1, 1994, Docket No. 27898, counsel for the petitioner petitioned the FAA on behalf of the petitioner for a waiver that would allow the petitioner to operate an all-Stage 2 fleet until it

obtained an installed hushkits that were under development at the time of the petition.

The petitioner operates scheduled and charter interstate and foreign air cargo operations. It began operating on November 11, 1992, under a temporary DOT certificate and obtained permanent DOT authority in April 1994. As of July 22, 1994, the petitioner's fleet consisted of 10 DC-8 series airplanes, all of which were Stage 2. To comply with the December 31, 1994, interim compliance requirement, the petitioner needed to retrofit or ground seven of its airplanes, or to add three Stage 3 airplanes to continue operating all 10 of its Stage 2 DC-8's.

Denial of Waiver: In its first required filing, the petitioner reported that, as a new entrant, it would comply with § 91.967. In a subsequent report (for 1993), the petitioner stated that it "intends to apply for an exemption or waiver from the requirements for compliance for the December 31, 1994, compliance date." At the time of its petition, the petitioner reported a fleet of 10 Stage 2 DC-8's with a plan to add two more before the end of 1994, and that it had no plans to acquire any other type of airplane. It is FAA policy to consider for the possibility of waiver only those airplanes in operation by an operator on the date of the petition. Further, the FAA could not find to be viable a plan that relied solely on the grant of a waiver. The petitioner also stated that its principles had contracted for hushkit development and that "the expected date of certification for this Stage 3 project is early 1995." While the FAA found a public benefit in the development of a hushkit for the subject DC-8 airplanes, that benefit had no logical connection to the waiver requested by an individual operator that knew the hushkit would not be available before the compliance date but chose to take no other action.

No. 5 operator: By petition dated September 1, 1994, Docket No. 27906, the petitioner petitioned the FAA for a waiver that would allow it to operate a fleet of five Stage 2 airplanes until December 31, 1995.

The petitioner began scheduled service in July 1994. From August to October 1994, the petitioner expanded its service. The petitioner began operating with three Stage 2 Boeing 737-200 airplanes. The petitioner took delivery of two more airplanes of the same model in September and October 1994. Under § 91.867, the fourth airplane in the petitioner's fleet would be required to be Stage 3 after December 31, 1994; the planned acquisition of the

fourth and fifth airplanes led to this request for a waiver.

Denial of Waiver: It is FAA policy to consider for the possibility of waiver only those airplanes in operation by an operator on the date of the petition. In this instance, the petitioner was operating three Boeing 737-200 airplanes, but it had already committed to leasing two more that were scheduled for delivery in September and October 1994. As early as March 1994, before its airplane leases began, the petitioner was investigating bringing the airplanes it planned to operate into compliance. However, since the petitioner elected to lease a Stage 2 airplane as its fourth airplane and take delivery of it in September, as well as a fifth airplane in October, the FAA found that the petitioner was apparently unwilling to adapt its business plans to achieve compliance with a regulation that predates the existence of the airline. During this time, the petitioner also began discussions regarding the lease of a Stage 3 airplane, and indicated to the FAA that even if such a lease were negotiated, it could not bring the airplane into service in time to meet the compliance date. The FAA found that commencing such complex actions so close to the compliance date was not a viable compliance plan nor did it demonstrate a good faith effort to comply. Also, the FAA was unable to conclude that the public interest claimed by the petitioner in its providing service outweighed the larger public interest in compliance and the integrity of the phased transition to an all Stage 3 fleet by the year 2000.

No. 6 petitioner: By petition dated August 3, 1994, Docket No. 27869, counsel for the petitioner petitioned the FAA on behalf of the petitioner for a waiver that would allow the petitioner to operate all of its Stage 2 airplanes beyond the interim compliance date of December 31, 1994.

The petitioner operates an all-cargo service on a charter basis worldwide and by scheduled service between the United States and Central and South America. The petitioner operated a fleet of four Stage 2 airplanes, three Boeing 707's and one McDonnell Douglas DC-8. To comply with the December 31, 1994, interim compliance date in § 91.865, the petitioner needed to retrofit or ground one of its four airplanes or replace it with a Stage 3 airplane.

Denial of Waiver: The petitioner initially reported to the FAA that it planned to meet the compliance requirements by "retirement of Stage 2 or addition of Stage 3 aircraft." In two subsequent reports, the petitioner

indicated that it planned to comply in 1994 by phasing out 25% of its Stage 2 airplanes without further detail. The petitioner's petition did not contain any information as to changed circumstances or why the retirement of one airplane was no longer feasible. The FAA cannot accept the nonexistence of retrofit equipment as the basis for a waiver. If it did, the agency would be obligated to grant a waiver to every operator of such equipment, ostensibly for the entire interim compliance period. In this case, the FAA determined that no good faith effort had been demonstrated, since the petitioner did not show a willingness to adhere to its own compliance plan, but appeared to be relying on the existence of the waiver provision to continue the same level of operations after the December 31, 1994, compliance date.

No. 7 petitioner: By petition dated December 7, 1994, Docket No. 27994, the petitioner petitioned the FAA for a waiver that would allow it to operate a fleet of four all Stage 2 airplanes until January 31, 1995.

The petitioner is a new entrant air carrier that began service on December 4, 1994. At the time the petitioner petitioned for a waiver on December 7, 1994, it operated a fleet of two Stage 2 airplanes. The petitioner exercised an option to add two additional Stage 2 airplanes to its fleet and was awaiting delivery of another airplane currently undergoing installation of Stage 3 hushkits. Since this Stage 3 airplane was not to be delivered to the petitioner until January 16, 1995, to comply with the December 31, 1994, interim compliance date in § 91.867, the petitioner would have had to ground one of its four Stage 2 airplanes.

Denial of Waiver: After the petitioner knew that there was a possibility that its hushkitted airplane would be delayed until after the compliance date, it chose to apply for a waiver for airplanes it had not yet exercised its option to lease. The petitioner then exercised the lease option, apparently doing so knowing that the possibility of delay existed for the delivery of its Stage 3 airplane. Accordingly, the FAA cannot accept the argument that the petitioner made a good faith effort to comply or conclude that a waiver was even necessary when the application was submitted. When the petitioner exercised its option to lease the airplanes, it made a business decision to possibly put itself out of compliance, and knew that on the compliance date it might possibly possess a fleet of airplanes that required a waiver to operate fully. If the petitioner had committed to leasing the two additional Stage 2 airplanes and

later been informed that the delivery of its Stage 3 airplane would be delayed until after the compliance date, the FAA might have been able to look at the circumstances more favorably given the petitioner's efforts to secure the timely delivery of a Stage 3 airplane. But the statement in the petitioner's petition that it knew there might be a problem before it exercised its lease option denies that this was the case. The FAA is unable to conclude that the petitioner's statements reflect a net public benefit in the grant of a waiver. The possibility that the petitioner would have had to ground one of its airplanes for a short time, partially because of its own actions taken after it was told of a possible problem with the delivery of its Stage 3 airplane, does not outweigh the significant public interest inherent in full compliance with the rule.

Use of Interchange Agreements for Noise Compliance

The FAA reminds all operators of Stage 2 noise level airplanes subject to the phaseout under §§ 91.865 or 91.867 that, as of March 14, 1995, new compliance arrangements that rely on sharing Stage 3 airplanes by placing them on the operators specifications of more than one operator are prohibited, and that existing arrangements cannot be used to comply with December 31, 1996, and subsequent requirements. This prohibition applies to U.S. and non-U.S. operators of Stage 2 airplanes covered by the Stage 3 transition rules. A full statement of this policy and the reasons for its adoption were published in the Federal Register on March 14, 1995, at 60 FR 13627.

Issued in Washington, DC on August 9, 1996.

James D. Erickson,

Director of Environment and Energy.

[FR Doc. 96-20834 Filed 8-19-96; 8:45 am]

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Federal Transit Administration

Charter Services Demonstration Program; Public Meeting

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting, open to all interested parties, to discuss and comment on the Federal Transit Administration's (FTA) draft final report to Congress on the charter services demonstration program mandated by section 3040 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Under