

Rules and Regulations

Federal Register

Vol. 63, No. 40

Monday, March 2, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29155]

Procedures for Processing Petitions for Final Compliance Waivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: This document presents a review of the procedures and information necessary for a U.S. air carrier operating Stage 2 noise level airplanes subject to the Stage 3 transition regulations, required by the Airport Noise and Capacity Act of 1990 (ANCA), to submit a request for a final compliance waiver. ANCA provides that U.S. air carriers may apply for a waiver from final compliance. This document outlines the requirements for a petition for waiver from the final compliance requirements of the Stage 3 transition regulations.

EFFECTIVE DATE: March 2, 1998.

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

The Airport Noise and Capacity Act of 1990 (ANCA) provides that after December 31, 1999, no person may operate a Stage 2 airplane over 75,000 pounds in the contiguous United States. This statutory requirement is codified at 14 CFR 91.853. ANCA also provides that a U.S. air carrier may request a limited waiver under certain circumstances.

In order to facilitate planning by affected U.S. air carriers, the Federal Aviation Administration (FAA) is summarizing the regulatory and statutory requirements for final waiver requests from the Stage 3 transition regulations.

Filing Requests

As stated in 49 U.S.C. 47528(b), a U.S. air carrier may apply for a waiver from final compliance if, by July 1, 1999, at least 85% of the air carrier's fleet meets Stage 3 noise standards. ANCA requires that waiver applications must be filed no later than Friday, January 1, 1999. These statutory provisions are also codified in 14 CFR 91.873. Although the statute states that applications are to be filed with the Secretary of Transportation, authority for ANCA requirements has been delegated to the FAA (see CFR 1.47(s)).

The statutory criteria for petitioning for a waiver from final compliance are codified at 14 CFR 91.873. Since ANCA was enacted in 1990, the FAA had to determine how new entrants would be considered under this criteria. The FAA decided that to be eligible to apply for the waiver under this section, a new entrant U.S. air carrier must initiate service no later than January 1, 1999, and must comply fully with all provisions of § 91.873, including having a fleet that would be 85% Stage 3 by July 1, 1999.

Each request from a petitioning air carrier for a final compliance waiver will be reviewed to determine whether it meets the basic criteria listed in 14 CFR 91.873. If the criteria are not met, the petitioning air carrier will receive a letter indicating that all of the required information has not been submitted. Petitioning air carriers will have an opportunity to submit missing information before any disposition is final.

When the FAA promulgated the Stage 3 transition regulations in 1991, it stated in the preamble that "[t]he FAA has not changed its basic position from the notice of proposed rulemaking that waivers from the final compliance date will not be automatic. The FAA agrees that operators should be cautioned to plan for the final compliance date; if the Congress did not intend the cessation of Stage 2 operations in the contiguous United States by December 31, 1999, that provision would not appear in the statute. The FAA intends the statutory

waiver provision to be a relief valve against unforeseen economic and supply circumstances to be determined based on the circumstances of the individual operators at the time. "Automatic" waivers cannot provide for unique circumstances."

Criteria (14 CFR 91.873)

ANCA contains a provision that allows U.S. air carriers to apply for a waiver from final compliance. This statutory provision is implemented in 14 CFR 91.873. In order to apply for a waiver from final compliance, at least 85% of a U.S. air carrier's fleet must meet Stage 3 noise standards by July 1, 1999. Applications must be filed with the FAA by January 1, 1999, and they must include a plan with firm orders for replacing or modifying all airplanes to ensure compliance with Stage 3 noise levels at the earliest practicable time. To avoid any misinterpretation, the FAA reminds each affected U.S. air carrier that its annual report for 1998, which is required under § 91.875, must reflect the carrier's progress in meeting the 100% Stage 3 requirement fleet by December 31, 1999. Annual reports for 1998 may not use the final waiver as an expected means of compliance.

The statute requires that a waiver from final compliance may be granted only if the granting of such a waiver is found to be in the public interest. No waivers may be granted beyond December 31, 2003. In determining whether the public interest criteria is met, the FAA will use elements similar to those used to consider interim compliance waivers under § 91.871. The criteria used under § 91.871 are as follows:

Each application for a waiver must contain all of the following:

1. The petitioning air carrier's plan to achieve interim and final compliance;
2. An explanation of the petitioning air carrier's efforts to date to achieve compliance; and
3. The petitioning air carrier has to show why its request would be in the public interest.

In accordance with its previous interim compliance waiver requirements, the FAA will also consider whether compliance has been shown to be:

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 request will be considered only for the airplanes operated by the petitioning air carrier on the date the request was submitted to the FAA. The FAA's analysis will take into account the total circumstances of the petitioning air carrier, including all actions taken up to the date of the request.

Publication

Upon completion of the review and determination that the petition of the air carrier 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 FAA may grant a waiver after considering whether granting such waiver would be in the public interest and if granting such waiver fulfills the statutory intent of phasing out Stage 2 airplanes. In making such a finding, the statute requires the FAA to consider the effect of granting such waiver on competition in the air carrier industry, the effect on small community air service, and any other information submitted by the petitioning air carrier. Also, the FAA will not act upon a waiver request until the petitioning air carrier meets the 85% Stage 3 airplane fleet requirement, which must be met no later than July 1, 1999, to get a waiver. If the results of the analysis show that the petitioning air carrier has met the criteria, the FAA will prepare documentation to grant the request for waiver. If the analysis shows that the petitioning air carrier has failed to meet the criteria, the FAA will prepare documentation to deny the request. 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 petitioning air carrier, but in no case will the waiver permit the operation of any Stage 2 airplane subject to § 91.853 after December 31, 2003. If the petitioning air carrier cannot achieve compliance within the time frame

granted in a waiver, the petitioning air carrier must submit a new request that will be evaluated under the same criteria as the original request. New requests that fail to provide more information than the original will be denied.

Dual-Certificated Airplanes

The FAA is taking this opportunity to remind operators about the special procedures available for noise compliance by dual-certificated airplanes.

Certain Boeing 747 airplanes received dual noise certification, and the appendices of the Airplane Flight Manuals (AFM) for these airplanes contain the weights and flap settings for both Stage 2 and Stage 3 operations. The FAA considers all such airplanes to be Stage 2 airplanes for compliance purposes unless and until one of three options is chosen by the operator. These options are:

1. The aircraft is designated in the operations specifications, paragraph A26, as restricted to Stage 3 operation when operating to or from any airport in the contiguous 48 United States;
2. The operator surrenders the dual certification to the FAA or Boeing through amendment of the AFM by supplemental type certificate. The AFM would then contain only the operating limits for Stage 3 operation; or
3. If an operator demonstrates to the FAA that the configurations listed in the AFM for Stage 2 and Stage 3 operations are identical at the maximum gross takeoff weight of the airplane, the airplane may be designated Stage 3.

Only Boeing 747 airplanes that had previously received dual type certification are eligible to use these compliance options. These compliance options are available for use during the interim compliance period. After December 31, 1999, one of these options must be chosen for each dual-certificated Boeing 747 or the airplane will not be eligible for inclusion on the U.S. operations specifications of the operator.

Issued in Washington, DC, on February 24, 1998.

James D. Erickson,

Director of Environment and Energy.

[FR Doc. 98-5295 Filed 2-27-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 256

RIN 1076-AD52

Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This rule revises the procedures governing the Housing Improvement Program (HIP). The Bureau of Indian Affairs has revised the procedures to clarify and simplify the conditions and terms for providing housing assistance and to allow additional flexibility in administering the program. The new procedures will encourage innovation in providing housing assistance to eligible individuals.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: June Henkel, Division of Housing Assistance, Bureau of Indian Affairs, Department of the Interior, telephone (202) 208-2721.

SUPPLEMENTARY INFORMATION: This final rule is published under authority delegated the Secretary of the Interior to the Assistant Secretary-Indian Affairs in the Departmental Manual at 209 DM 8. This final rule, revising regulations which govern the HIP grant process as codified at 25 CFR part 256, was preceded by the publication of the NPRM in the **Federal Register** on July 15, 1996 (Vol. 61, No. 136, page 36829), with a 60-day comment period, and the Notice of Proposed Transfer of Funds to Tribal Priority Allocations in the **Federal Register** on September 4, 1996 (Vol. 61, No. 172, page 46660), with a 45-day public comment period.

I. Background

Current regulations provide for an emphasis on the repair and renovation of existing housing and for the award of Housing Improvement Program appropriations to Indian tribes based on a distribution formula which uses the current tribal housing inventory of need as its basis. These regulations seek to clarify and simplify the terms and conditions under which the program is operated. A funding distribution methodology was omitted from the proposed regulations based on the intention of identifying a Housing Improvement Program appropriations distribution formula for use in the Tribal Priority Allocation system. Comments received from tribes in that consultation process did not support either of the proposed alternatives.