

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 27314, Amendment No. 91-232]

RIN 2120-AE 49

Special Federal Aviation Regulation No. 64; Special Flight Authorizations for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This final rule establishes a new Special Federal Aviation Regulation (SFAR) that will allow persons to bring a noise-restricted aircraft into the United States under certain conditions without requesting an exemption. The SFAR allows for the issuance of special flight authorizations for one-time flights of noise-restricted aircraft when they are entering the country to be noise retrofitted or sold for scrap. The SFAR is intended to reduce the paperwork burden on both applicants and the FAA, to reduce the processing time for routine actions, to implement certain provisions of the Airport Noise and Capacity Act of 1990, and to restore certain provisions of a similar SFAR that expired December 31, 1991.

DATES: Effective June 3, 1993. Comments must be received on or before October 1, 1993.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 27314, 800 Independence Avenue SW., Washington, DC. Comments may be inspected in room 915G between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27314." The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette 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:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or be calling (202) 267-3484. Requests should be identified by the docket number of this rule.

Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 91.805 of the Federal Aviation Regulations (FAR) prohibits any person from operating a civil subsonic turbojet airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States on or after January 1, 1985, unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels as contained in 14 CFR part 36. This restriction applies to U.S.-registered aircraft that have standard airworthiness certificates and foreign-registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States.

SFAR 47 (50 FR 7751) was effective on February 26, 1985, and permitted certain operations of noise-restricted aircraft without a formal grant of exemption under 14 CFR part 11. The Federal Aviation Administration (FAA) has determined that this process is cost-beneficial and time-efficient both to the government and affected aircraft operators. SFAR 47 was extended three times (51 FR 47219, December 31, 1986; 52 FR 35052, September 16, 1987; and 54 FR 52900, December 22, 1989).

The Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2157, 2158), provides for the operation in the United States of otherwise restricted Stage 2 aircraft to obtain modifications to meet Stage 3 noise levels. In its regulation codifying this provision of the legislation, the FAA stated that it would issue a SFAR to provide procedures for special flight authorizations to facilitate these operations.

This special flight authorization is available to any U.S.-owned Stage 2 airplane otherwise prohibited from operating into the contiguous United States by FAR § 91.855.

Maintenance Flights *see SFAR 64-1*

Special flight authorizations for maintenance flights are obtained from FAA's Flight Standards Division and are not covered by this SFAR. Section 91.857(b) of the recently adopted noise regulations permits an operator of a Stage 2 airplane with a certificated weight of more than 75,000 pounds that was imported into a noncontiguous State, territory, or possession of the United States on or after November 5, 1990, to obtain a special flight authorization to operate that airplane into the contiguous United States for the purpose of maintenance. The maintenance flight must be a nonrevenue or "ferry" flight. Special flight authorizations for maintenance are provided for by § 91.857(b) itself and do not require a separate request under this SFAR.

Notwithstanding the exact language of the regulation, a special flight authorization for maintenance may also be requested under § 91.857 for Stage 2 airplanes with a certificated weight of more than 75,000 pounds that were purchased by a U.S. entity after November 5, 1990, but have not been operated into a noncontiguous state or territory.

Airplanes entering the United States for modifications to comply with a Stage 2 or Stage 3 noise level are not considered to be obtaining maintenance. Special flight authorizations for modification flights must be obtained pursuant to § 91.859 or this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the reporting requirements associated with this rule are being submitted for approval to the Office of Management and Budget (OMB). Upon approval, the FAA will publish the assigned OMB Control number in the Federal Register.

Economic/Regulatory Impact Evaluation

This SFAR provides an alternative from the exemption process for certain operations, reducing the administrative costs to aircraft operators and to the FAA. While the operations are not without some noise costs, these costs can be characterized as minimal, since the number of operations at any one local airport are anticipated to be both infrequent and extremely low in number.

Environmental Analysis

The procedures implemented by the SFAR have been determined to not significantly affect the quality of the

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human environment. Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact is being prepared and will be placed in the docket.

Federalism Implications

The regulation 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Need for Immediate Adoption

Since the expiration of SFAR 47, the FAA has received several requests for special flight authorizations that would have been covered by SFAR 47. Each of these applicants was instructed to file its request as a petition for exemption, and each expressed a desire to see SFAR 47 or some replacement institute as quickly as possible because of the length of time and paperwork required to process routine requests as exemptions under 14 CFR part 11.

The FAA stated its intention to replace SFAR 47 in its final rule codifying certain provisions of the Airport Noise and Capacity Act of 1990 (56 FR 48628, September 25, 1991). Section 9309 of the Act (49 U.S.C. App. 2158) includes a provision for allowing otherwise noise-restricted aircraft to enter the United States to obtain modification to meet Stage 3 noise levels. The FAA's experience with this type of action has shown that the most efficient means of granting this permission is by a special flight authorization requests through an SFAR. The only alternative is for an applicant to apply for an exemption under 14 CFR part 11, a process that involves considerably more administrative work for the agency and the petitioner, and the additional time associated with processing that paperwork. Accordingly, the FAA determined that this new SFAR, incorporating the applicable provisions of expired SFAR 47 and the new provisions of the 1990 Act, be developed.

The FAA has determined that prior notice and public comment on this SFAR is unnecessary and contrary to the public interest. The provisions relating to the application for a special flight authorization that were contained in

previous SFAR as well known and well regarded by industry. The new SFAR does not change any of the familiar procedures; it expands the applicability of the previous SFAR to include those aircraft affected by the 1990 Act, and to facilitate the movement of airplanes necessitated by the transition to an all Stage 3 fleet, also required by the 1990 Act.

Although this SFAR is being adopted without prior notice and public comment, interested persons may submit comments in triplicate to the address listed under the ADDRESSES caption above. All comments will be available for examination in the Rules Docket. This SFAR may be amended in response to such comments.

Conclusion

For the reasons stated above, I certify that this amendment: (1) Is not a major rule under Executive Order 12291; (2) is considered a significant rule, but does not require a Regulatory Evaluation 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. In addition, this SFAR will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States, since all affected operators are treated equally by this regulation.

The Final Rule

Accordingly, the FAA amends 14 CFR part 91 of the Federal Aviation 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. App. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, 2121 through 2125, 2157 and 2158, Articles 12, 28, 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. Part 19 is amended by adding the following Special Federal Aviation Regulation:

SFAR No. 64—Special Flight Authorizations for Noise Restricted Aircraft

Contrary provisions of part 91, subpart I notwithstanding, an operator of a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds may conduct an approved

limited nonrevenue operation of that airplane to or from a U.S. airport when such operation has been authorized by the FAA under paragraph 3 of this SFAR; and

(a) The operator complies with all conditions and limitations established by this SFAR and the authorization;

(b) A copy of the authorization is carried aboard the airplane during all operations to or from a U.S. airport;

(c) The airplane carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country; and

(d) Whenever the application is for operation to a location at which FAA-approved noise abatement retrofit equipment is to be installed to make the aircraft comply with Stage 2 or Stage 3 noise levels as defined in part 36 of this chapter, the applicant must have a valid contract for such equipment.

3. Authorization for the operation of a Stage 1 or Stage 2 civil turbojet airplane to or from a U.S. airport may be issued by the FAA for the following purposes:

Stage 1 Airplanes

(a) For a Stage 1 airplane owned by a U.S. owner/applicant on and since November 4, 1990:

(i) Obtaining modifications necessary to meet Stage 2 noise levels as defined in part 36 of this chapter;

(ii) Obtaining modifications necessary to meet Stage 3 noise levels as defined in part 36 of this chapter; or

(iii) Scrapping the airplane, as deemed necessary by the FAA, to obtain spare parts to support U.S. programs for the national defense or safety.

(b) For a Stage 1 airplane owned by a non-U.S. owner/applicant:

(i) Obtaining modifications necessary to meet Stage 2 noise levels as defined in part 36 of this chapter;

(ii) Obtaining modifications necessary to meet Stage 3 noise levels as defined in part 36 of this chapter; or

(iii) Scrapping the airplane, as deemed necessary by the FAA, to obtain spare parts to support U.S. programs for the national defense or safety.

(c) For a Stage 1 airplane purchased by a U.S. owner/applicant on or after November 5, 1990:

(i) Obtaining modifications necessary to meet Stage 2 noise levels as defined in part 36 of this chapter, provided that the airplane does not subsequently operate in the contiguous United States;

(ii) Obtaining modifications necessary to meet Stage 3 noise levels as defined in part 36 of this chapter; or

(iii) Scrapping the airplane, as deemed necessary by the FAA, to obtain

spare parts to support U.S. programs for the national defense or safety.

Stage 2 Airplanes

(d) For a Stage 2 airplane purchased by a U.S. owner/applicant on or after November 5, 1990, obtaining modification to meet Stage 3 noise levels as defined in part 36 of this chapter.

(e) For Stage 2 airplanes that were U.S.-owned on and since November 4, 1990, and that have been removed from service to achieve compliance with § 91.865 or § 91.867 of this part:

(i) Obtaining modifications to meet Stage 3 noise levels as defined in part 36 of this chapter;

(ii) Prior to January 1, 2000, exporting an airplane, including flying the airplane to or from any airport in the contiguous United States necessary for the exportation of that airplane; or

(iii) Prior to January 1, 2000, operating the airplane as deemed necessary by the

FAA for the sale, lease, storage, or scrapping of the airplane.

4. An application for a special flight authorization under this Special Federal Aviation Regulation shall be submitted to the FAA, Director of the Office of Environment and Energy, received no less than five days prior to the requested flight, and include the following:

(a) The applicant's name and telephone number;

(b) The name of the airplane operator;

(c) The make, model, registration number, and serial number of the airplane;

(d) The reason why such authorization is necessary;

(e) The purpose of the flight;

(f) Each U.S. airport at which the flight will be operated and the number of takeoffs and landings at each;

(g) The approximate dates of the flights;

(h) The number of people on board the airplane and the function of each person;

(i) Whether a special flight permit under FAR part 21.199 or a special flight authorization under FAR part 91.715 is required for the flight;

(j) A copy of the contract for noise abatement retrofit equipment, if appropriate; and

(k) Any other information or documentation requested by the Director, Office of Environment and Energy, as necessary to determine whether the application should be approved.

5. The Special Federal Aviation Regulation terminates on December 31, 1999, unless sooner rescinded or superseded.

Issued in Washington, DC, on May 25, 1993.

Joseph M. Del Balzo,
Acting Administrator.

[FR Doc. 93-13045 Filed 6-2-93; 8:45 am]
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