

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 21 and 36**

[Docket No. 23345; Notice No. 89-7]

RIN 2120-AB53

Primary Category Aircraft**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: This supplemental notice corrects statements made in Notice No. 89-7, concerning the applicability of noise standards for airplanes in the proposed category of primary aircraft. Contrary to what was stated in the notice, existing noise standards would be applicable to primary category airplanes, primary category-light airplanes and helicopters. It was not the intention of the FAA to imply that certification in the primary category constitutes a waiver of these noise requirements. The FAA seeks additional comments from the public on amended language to clarify the application of noise standards to the proposed new categories of aircraft.

DATES: Comments must be submitted on or before September 30, 1991.

ADDRESSES: Comments on this notice should be mailed in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 23345, 800 Independence Ave. SW., Washington, DC 20591. Comments delivered must be marked Docket No. 23345. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT: T. Lynn Brown, Aircraft Engineering Division, (AIR-110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-9589.

SUPPLEMENTARY INFORMATION:**Comments Invited**

This supplemental notice modifies Notice 89-7, primary Category Aircraft (54 FR 9738, March 7, 1989). Comments on the effect of this change on the proposed rules are invited. Comments should be limited to the changes proposed in this document. This notice does not serve to reopen the comment period on the remainder of the original primary category proposal. Interested persons are invited to comment on any portion of this supplemental notice by

submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals as modified in this document are also invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 23345." The postcard will be date stamped and mailed to the commenter.

Availability of SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration Office of Public Affairs, Attention: Public Inquiry Center (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this SNPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 7, 1989, the FAA published Notice No. 89-7 (Primary Category Aircraft), which proposed the adoption of a new category of aircraft to be known as "primary category" aircraft. Such aircraft would be of simple design intended for pleasure and personal use only. The aircraft (airplanes, gliders, rotorcraft, manned free balloons, etc.) would be unpowered or powered by a single, naturally aspirated engine having a certificated takeoff rating of 200 shaft horsepower or less, a maximum weight of 2,500 pounds or less, and would have unpressurized cabins. The NPRM also discussed proposals for type, production, and airworthiness certification standards and procedures that would be simpler than those currently contained in Federal Aviation Regulations (FAR) Parts 21, 23, and 27 and that are applicable to aircraft of this size and type.

As proposed, the rule would not require type or airworthiness

certification of ultralight vehicles, as defined in the FAR, but it would permit certification as "primary category-light" as an option for aircraft currently classified as powered ultralights and "growth versions" of ultralights having a maximum certificated weight of 1,000 pounds or less. The proposed rules would also permit certain aircraft currently certificated in the standard (normal, utility, or acrobatic) category to be converted to the primary category.

In the Supplementary Information section of Notice No. 89-7, it was incorrectly stated that within the primary category, only small propeller-driven airplanes would be subject to the noise requirements of FAR Part 36. This supplemental notice is intended to clarify that, as proposed, helicopters in this category would also be subject to the noise restrictions.

Discussion

Effective February 5, 1988, FAR part 36 was amended (53 FR 3534, February 5, 1988) to add Appendix H, Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories, applicable to helicopters for which application for type certification was made on or after March 6, 1986. Effective December 22, 1988, FAR Part 36 was further amended (53 FR 47394, November 22, 1988) to add a new Appendix G, Noise Certification Standards for Propeller-Driven Small Airplanes, applicable to aircraft for which certification tests were not completed before December 22, 1988. Appendix G contains new noise testing procedures to be used in all certification tests after December 22, 1988, although the stringency of the actual noise limits to be met was not substantially affected.

The effect of these two amendments was overlooked when the FAA issued the primary category NPRM. In addition, the requirements of section 611 of the Federal Aviation Act of 1958 (FA Act), which apply to all type certificated aircraft, may affect the procedures used to certify these aircraft, as discussed in more detail later in this preamble.

Part 36 Requirements

As proposed, primary category aircraft would be subject to part 36, as follows:

Rotorcraft

Helicopters certificated in the primary category would be required to demonstrate compliance with the noise standards and testing procedures in appendix H to part 36. Rotorcraft other than helicopters are not subject to noise requirements at this time.

Propeller-Driven Airplanes

Primary category propeller-driven airplanes would be required to meet the requirements of appendix G to part 36. As discussed below, however, this would not apply to aircraft that had been certificated previously in the standard category, had already demonstrated compliance with appendix F or G, and are being converted to primary category.

Ultralights

Ultralights, as defined in part 103 of the FAR, are not currently subject to the noise requirements of either part 36 or section 611 of the FA Act. However, persons choosing to certify their ultralight vehicles in the primary category would also be required to comply with appendix G.

Aircraft Previously Certificated in the Standard Category

The FAA proposes that aircraft previously certificated in the standard (normal, utility, or acrobatic) category that have shown compliance with the applicable requirements of part 36 (appendix F, G, or H) would not be required to re-demonstrate compliance with part 36 when seeking conversion to the primary category. However, aircraft seeking conversion that also undergo acoustical changes as defined in parts 21 and 36 would be required to comply with appendix G or H as applicable. Moreover, conversions to primary category for helicopters that were type certificated before appendix H became effective would be required to meet appendix H. Helicopters require treatment that differs from the treatment for part 23 airplanes because no part 36 noise control standards existed for helicopters prior to adoption of appendix H.

The FAA is required to develop and apply noise control standards to all civil aircraft. These standards are set out in 14 CFR part 36. Accordingly, aircraft seeking certification under primary category would be required to comply with the standards of Part 36; and the cost of such compliance must be considered in evaluating the proposed rule.

Noise Control Requirements of the FA Act

The Noise Control Act of 1972 amended section 611 of the FA Act to require the FAA, before issuing an original type certificate, to determine whether substantial noise abatement can be achieved by prescribing standards and regulations, unless standards and regulations for that

aircraft already exist. In making this determination, the FAA is required to consider, among other issues, whether any proposed standard or regulation would be economically reasonable, technologically practicable, and appropriate for the particular type of aircraft. The Noise Control Act applies to all aircraft except ultralights and aircraft with experimental certificates, neither of which are subject to type certification.

Supplemental Regulatory Evaluation Summary

The FAA has considered the economic impact of this proposed modification of Notice 89-7, Primary Category Aircraft. Helicopters certificated under the proposed regulations would be subject to the noise standards and testing procedures in appendix H to part 36, regardless of any statement to the contrary in FAA's Notice 89-7. The FAA is required to apply these noise standards to all civil aircraft. Thus, any incremental costs resulting from the imposition of these noise standards to rotorcraft certificated under the proposed Primary Category Aircraft regulations would be attributable to part 36 rather than to the proposed rule.

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society from the regulatory changes outweigh the potential costs that would be imposed on society. In response to this requirement, the FAA normally performs a benefit/cost analysis of each proposed and final change to the FAR. In the case of this supplemental notice, however, the FAA has determined that a benefit/cost analysis is unwarranted because the proposal merely corrects and clarifies Notice 89-7 to make it consistent with FAR part 36.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires that a Regulatory Flexibility Analysis be conducted if a rule will have a significant economic impact, either detrimental or beneficial, on a significant number of small business entities. The proposed modification of Notice 89-7 will neither eliminate any present regulations or impose any new regulations and, thus, will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA has determined

that, under the criteria of the Regulatory Flexibility Act of 1980, a regulatory flexibility analysis of this supplemental notice of proposed rulemaking is not required.

International Trade Impact Assessment

The proposed modification of Notice 89-7 will neither eliminate any present regulations or impose any new ones. As a result, affected manufacturers and operators will not incur additional costs or realize significant savings. Thus, the proposed modification of Notice 89-7 will not have any impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Federalism Implications

The revised regulations proposed herein would 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 the preparation of a Federalism Assessment.

Conclusion

This supplemental NPRM clarifies the original Notice for primary category aircraft. For the reasons discussed in the preamble to the previous Notice and the preamble to this supplemental Notice, and based on the findings in the Regulatory Flexibility determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, it is certified that Notice No. 89-7, as corrected by this Notice, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal, including this supplemental Notice, is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal, including a supplement relating to the corrections in this notice, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety.

14 CFR Part 36

Aircraft, Noise control.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Notice No. 89-7, Primary Category Aircraft NPRM (54 FR 9738, March 7, 1989) as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. The authority citation for part 21 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1346(c), 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

2. Proposed § 21.17 is amended by revising paragraph (f)(2) to read as follows:

§ 21.17 Designation of applicable regulations.

* * * * *

(f) * * *

(2) The noise standards of part 36 applicable to primary category aircraft.

3. Proposed § 21.184 is amended by revising paragraph (f) to read as follows:

§ 21.184 Issue of special airworthiness certificates for primary category aircraft.

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(f) For all primary category aircraft (except for airplanes that are designed for "agricultural aircraft operations" as defined in § 137.3 of this chapter), no special airworthiness certificate is

originally issued under this section unless the applicant shows that the type design complies with the applicable airworthiness requirements in this section and the applicable noise requirements of part 36 as follows:

(1) Primary category helicopters, including helicopters that were previously certificated in the standard (normal) category and are being converted to the primary category, must be shown to comply with the requirements of appendix H to part 36.

(2) Primary category propeller-driven airplanes must be shown to comply with the requirements of appendix G to part 36, unless previously certificated under appendix F in the standard (normal, utility, or acrobatic) category.

(3) Primary category-light aircraft must comply with the applicable requirements of appendix G or H to part 36.

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for part 36 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et seq.; Sec. 124 of Pub. L. 08-473, E.O. 11514; 49 U.S.C. 106(g).

§ 36.9 [Amended]

5. The introductory paragraph of § 36.9 is amended by adding "primary and primary light," before the word "normal,".

§ 36.11 [Amended]

6. The introductory paragraph of § 36.11 is amended by adding "primary and primary light," before the word "normal,".

7. The proposed revision to § 36.501(a)(1) contained in the previous NPRM Notice 89-7 is withdrawn; and a new paragraph (a)(3) is added to read as follows:

§ 36.501 Noise limits.

(a) * * *

(3) Airplanes in the primary category, as follows:

(i) For all primary category airplanes not previously certificated under appendix F in the standard (normal, utility, or acrobatic) category, compliance must be shown as prescribed in appendix G.

(ii) For all primary category-light aircraft, compliance must be shown with appendix G or appendix H, as applicable.

§ 36.801 [Amended]

8. Section 36.801 is amended by adding "primary and primary-light," before the word "normal,".

§ 36.805 [Amended]

9. Section 36.805(a) is amended by adding "primary and primary-light," before the word "normal,".

Issued in Washington, DC, on July 26, 1991.

Thomas E. McSweeney,

Acting Director, Aircraft Certification Service.

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