

are allowed to continue, the FAA foresees that the underlying delays and failures to plan and implement real compliance may easily result in an unacceptable level of actual compliance and a large number of waiver applications based on arguments of financial hardship, and airplane and hushkit unavailability as participating operators are forced into complete compliance at the last minute.

Accordingly, the FAA is formally notifying operators of its policy that an individual Stage 3 airplane may be counted only in the fleet of one operator for purposes of compliance with the Stage 3 transition rules, regardless of the number of operators participating in the use of the airplane. This single counting does not affect the actual use of airplanes under interchange agreements; they may simply only be counted in the fleet of one of the participating operators for noise compliance purposes.

Policy Statement

For the purpose of compliance with §§ 91.865 or 91.867, the FAA will not count an individual Stage 3 airplane in the fleet of more than one operator.

This policy statement does not effect any operator's compliance with the December 31, 1994, compliance date. Thus, if an operator used shared airplanes to achieve compliance in 1994, that compliance is considered valid until December 31, 1996.

After the effective date of this policy, however, an operator may not use any type of airplane sharing agreement, regardless of the date of the agreement, to increase the number of Stage 2 airplanes it operates. As an example, a new entrant's fleet consists of three Stage 2 airplanes, and two Stage 3 airplanes that are also on the operations specifications of another operator. For purposes of the December 31, 1994, compliance date, that new entrant will be considered in compliance. However, that new entrant operator may *not* use the presence of the two shared Stage 3 airplanes to support the addition of three more Stage 2 airplanes to its fleet after the date of this policy statement, even though, with the addition, it would "remain" in compliance with § 91.867 by maintaining a fleet that is 25% Stage 3 airplanes. The FAA will not allow the presence of "shared" Stage 3 airplanes act as support for additional Stage 3 airplanes after the effective date of this policy.

The above example presumes that the new entrant attempting to add Stage 2 airplanes is not the operator that is claiming the Stage 3 airplane as its own. If the FAA finds a Stage 3 airplane that

is reported in the fleet of more than one operator, the FAA will not count it in the fleet of any of the reporting operators for noise compliance purposes until the airplane is declared by one of the operators as belonging in its fleet alone. The FAA will not mitigate disputes between operators involved in any airplane sharing agreement. The FAA presumes that the operators involved in a shared airplane agreement will reach their own agreement on which operator gets to count the airplane for compliance purposes. While the FAA anticipates that in most cases the reporting operator will be the owner of lessor under an interchange agreement, any agreement between the sharing operators that results in one operator counting the airplanes is acceptable to the FAA.

Most importantly, for purposes of the December 31, 1996, interim compliance deadline, no shared airplanes will be allowed to count in the fleet of more than one operator, regardless of the date of the sharing agreement, and regardless of whether the shared arrangement was found valid for compliance with the 1994 compliance date. Thus, operators that achieved compliance with the 1994 compliance date by means of shared Stage 3 airplanes are under notice that the continuation of the same arrangement or any new arrangement will not support compliance in with the December 31, 1996, requirement.

The FAA is formally publishing this policy at this time to give all affected operators the maximum amount of time to achieve compliance with the December 31, 1996 compliance date without the use of shared Stage 3 airplanes. As stated previously, the FAA has only very recently become aware of these arrangements and their use for compliance as the required reports for 1994 have been filed and analyzed, and it is only recently that the FAA has determined the serious negative consequences of allowing such practices to continue. However, the FAA determined that, in the interest of fairness and the lack of a formal written policy before this date, such agreements that were used to comply with the 1994 compliance date would not be disallowed retroactively. This policy statement is intended to prevent the further use of such agreements for noise compliance manipulation and preclude the proliferation of such agreements as the perceived "benefit" is realized.

Shared Stage 2 Airplanes

The FAA is also aware that there are existing sharing agreements for Stage 2 airplanes that result in Stage 2 airplanes being listed on the operations

specifications of more than one operator. To further the goals of the ANCA and its implementing regulations, the FAA will continue to count a Stage 2 airplane as part of the fleet of each of the operators sharing it. This is the method used in the compliance calculations for the 1994 compliance date, and will not affect the actual use of any such shared Stage 2 airplane by the participating operators.

Further, if a shared Stage 2 airplane was used to establish base level in the fleet of more than one operator by means of its presence on the operations specifications of the sharing operators during the appropriate period, the establishment of such base level is not affected. If the shared Stage 2 airplane is eliminated from one or all of the fleets of the operators participating in the sharing agreement, that removal may count for compliance purposes for all of the operators that remove it from their operations specifications.

In the event that any operator participating in the sharing of a Stage 2 airplane restricts its operations specifications to preclude the operation of that airplane into the contiguous United States. To achieve compliance, all other participating operators are also precluded from operating that airplane in the contiguous United States.

These policies concerning Stage 2 and Stage 3 airplanes apply to all operators of aircraft affected by the Stage 3 transition regulations, regardless of whether the operators are U.S. or non-U.S., and regardless of the level of formality of the agreement under which the subject airplanes are shared.

Comments concerning the effect of this policy on individual operators and their compliance with the Stage 3 transition regulations should be submitted to the docket established for this policy statement; the FAA will consider all comments received and refine the policy if warranted. Operators that have individual questions concerning the effect of this policy on their operations and compliance may submit written inquiries to the individual listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above.

Issued in Washington, DC on March 9, 1995.

Paul R. Dykeman,

Acting Director of Environment and Energy.

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