

THE AIRPORT NOISE AND CAPACITY ACT OF 1990 (“ANCA”)

United States Code Annotated Currentness
Title 49. Transportation (Refs & Annos)
Subtitle VII. Aviation Programs
Part B. Airport Development and Noise
Chapter 475. Noise (Refs & Annos)
Subchapter II. National Aviation Noise Policy

§ 47521. Findings

Congress finds that--

- (1) aviation noise management is crucial to the continued increase in airport capacity;
- (2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system;
- (3) a noise policy must be carried out at the national level;
- (4) local interest in aviation noise management shall be considered in determining the national interest;

- (5) community concerns can be alleviated through the use of new technology aircraft and the use of revenues, including those available from passenger facility fees, for noise management;
- (6) revenues controlled by the United States Government can help resolve noise problems and carry with them a responsibility to the national airport system;
- (7) revenues derived from a passenger facility fee may be applied to noise management and increased airport capacity; and
- (8) a precondition to the establishment and collection of a passenger facility fee is the prescribing by the Secretary of Transportation of a regulation establishing procedures for reviewing airport noise and access restrictions on operations of stage 2 and stage 3 aircraft.

§ 47522. Definitions

In this subchapter--

- (1) "air carrier", "air transportation", and "United States" have the same meanings given those terms in section 40102(a) of this title.
- (2) "stage 3 noise levels" means the stage 3 noise levels in part 36 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

§ 47523. National aviation noise policy

(a) General requirements.--Not later than July 1, 1991, the Secretary of Transportation shall establish by regulation a national aviation noise policy that considers this subchapter, including the phaseout and nonaddition of stage 2 aircraft as provided in this subchapter and dates for carrying out that policy and reporting requirements consistent with this subchapter and law existing as of November 5, 1990.

(b) Detailed economic analysis.--The policy shall be based on a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including--

- (1) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;
- (2) the impact of competition in the airline and air cargo industries;
- (3) the impact on nonhub and small community air service; and
- (4) the impact on new entry into the airline industry.

§ 47524. Airport noise and access restriction review program

(a) General requirements.--The national aviation noise policy established under section 47523 of this title shall provide for establishing by regulation a national program for reviewing airport noise and access restrictions on the operation of stage 2 and stage 3 aircraft. The program shall provide for adequate public notice and opportunity for comment on the restrictions.

(b) Stage 2 aircraft.--Except as provided in subsection (d) of this section, an airport noise or access restriction may include a restriction on the operation of stage 2 aircraft proposed after October 1, 1990, only if the airport operator publishes the proposed restriction and prepares and makes available for public comment at least 180 days before the effective date of the proposed restriction--

- (1) an analysis of the anticipated or actual costs and benefits of the existing or proposed restriction;
- (2) a description of alternative restrictions;
- (3) a description of the alternative measures considered that do not involve aircraft restrictions; and

(4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction.

(c) Stage 3 aircraft.--(1) Except as provided in subsection (d) of this section, an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator's request for approval as provided by the program established under this section. Restrictions to which this paragraph applies include--

- (A) a restriction on noise levels generated on either a single event or cumulative basis;
- (B) a restriction on the total number of stage 3 aircraft operations;
- (C) a noise budget or noise allocation program that would include stage 3 aircraft;
- (D) a restriction on hours of operations; and
- (E) any other restriction on stage 3 aircraft.

(2) Not later than 180 days after the Secretary receives an airport or aircraft operator's request for approval of an airport noise or access restriction on the operation of a stage 3 aircraft, the Secretary shall approve or disapprove the restriction. The Secretary may approve the restriction only if the Secretary finds on the basis of substantial evidence that--

- (A) the restriction is reasonable, nonarbitrary, and nondiscriminatory;
- (B) the restriction does not create an unreasonable burden on interstate or foreign commerce;
- (C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;
- (D) the restriction does not conflict with a law or regulation of the United States;
- (E) an adequate opportunity has been provided for public comment on the restriction; and
- (F) the restriction does not create an unreasonable burden on the national aviation system.

(3) Paragraphs (1) and (2) of this subsection do not apply if the Administrator of the Federal Aviation Administration, before November 5, 1990, has formed a working group (outside the process established by part 150 of title 14, Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes at the airport. However, if an agreement on noise reductions at that airport is made between the airport proprietor and one or more air carriers or foreign air carriers that constitute a majority of the carrier use of the airport, this paragraph applies only to a local action to enforce the agreement.

(4) The Secretary may reevaluate an airport noise or access restriction previously agreed to or approved under this subsection on request of an aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport that justifies a reevaluation. The Secretary shall establish by regulation procedures for conducting a reevaluation. A reevaluation--

(A) shall be based on the criteria in paragraph (2) of this subsection; and

(B) may be conducted only after 2 years after a decision under paragraph (2) of this subsection has been made.

(d) Nonapplication.--Subsections (b) and (c) of this section do not apply to--

(1) a local action to enforce a negotiated or executed airport noise or access agreement between the airport operator and the aircraft operators in effect on November 5, 1990;

(2) a local action to enforce a negotiated or executed airport noise or access restriction agreed to by the airport operator and the aircraft operators before November 5, 1990;

(3) an intergovernmental agreement including an airport noise or access restriction in effect on November 5, 1990;

(4) a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety;

(5)(A) an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect; or

(B) a new restriction imposed by an airport operator to replace any part of a restriction described in subclause (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990; or

(6) a local action that represents the adoption of the final part of a program of a staged airport noise or access restriction if the initial part of the program was adopted during 1988 and was in effect on November 5, 1990.

(e) Grant limitations.--Beginning on the 91st day after the Secretary prescribes a regulation under subsection (a) of this section, a sponsor of a facility operating under an airport noise or access restriction on the operation of stage 3 aircraft that first became effective after October 1, 1990, is eligible for a grant under section 47104 of this title and is eligible to impose a passenger facility fee under section 40117 of this title only if the restriction has been--

(1) agreed to by the airport proprietor and aircraft operators;

(2) approved by the Secretary as required by subsection (c)(1) of this section; or

(3) rescinded.

§ 47525. Decision about airport noise and access restrictions on certain stage 2 aircraft

The Secretary of Transportation shall conduct a study and decide on the application of section 47524(a)-(d) of this title to airport noise and access restrictions on the operation of stage 2 aircraft with a maximum weight of not more than 75,000 pounds. In making the decision, the Secretary shall consider--

- (1) noise levels produced by those aircraft relative to other aircraft;
- (2) the benefits to general aviation and the need for efficiency in the national air transportation system;
- (3) the differences in the nature of operations at airports and the areas immediately surrounding the airports;
- (4) international standards and agreements on aircraft noise; and
- (5) other factors the Secretary considers necessary.

§ 47526. Limitations for noncomplying airport noise and access restrictions

Unless the Secretary of Transportation is satisfied that an airport is not imposing an airport noise or access restriction not in compliance with this subchapter, the airport may not--

- (1) receive money under subchapter I of chapter 471 of this title; or
- (2) impose a passenger facility fee under section 40117 of this title.

§ 47527. Liability of the United States Government for noise damages

When a proposed airport noise or access restriction is disapproved under this subchapter, the United States Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of the disapproval. The United States Court of Federal Claims has exclusive jurisdiction of a civil action under this section.

§ 47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels

- (a) **Prohibition.**--Except as provided in subsection (b) or (f) of this section and section

47530 of this title, a person may operate after December 31, 1999, a civil subsonic turbojet (for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator) with a maximum weight of more than 75,000 pounds to or from an airport in the United States only if the Secretary of Transportation finds that the aircraft complies with the stage 3 noise levels.

(b) Waivers.--(1) If, not later than July 1, 1999, at least 85 percent of the aircraft used by an air carrier or foreign air carrier to provide air transportation comply with the stage 3 noise levels, the carrier may apply for a waiver of subsection (a) of this section for the remaining aircraft used by the carrier to provide air transportation. The application must be filed with the Secretary not later than January 1, 1999, or, in the case of a foreign air carrier, the 15th day following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century and must include a plan with firm orders for making all aircraft used by the carrier to provide air transportation comply with the noise levels not later than December 31, 2003.

(2) The Secretary may grant a waiver under this subsection if the Secretary finds it would be in the public interest. In making the finding, the Secretary shall consider the effect of granting the waiver on competition in the air carrier industry and on small community air service.

(3) A waiver granted under this subsection may not permit the operation of stage 2 aircraft in the United States after December 31, 2003.

(c) Schedule for phased-in compliance.--The Secretary shall establish by regulation a schedule for phased-in compliance with subsection (a) of this section. The phase-in period shall begin on November 5, 1990, and end before December 31, 1999. The regulations shall establish interim compliance dates. The schedule for phased-in compliance shall be based on--

(1) a detailed economic analysis of the impact of the phase out date for stage 2 aircraft on competition in the airline industry, including--

(A) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(B) the impact of competition in the airline and air cargo industries;

(C) the impact on nonhub and small community air service; and

(D) the impact on new entry into the airline industry; and

(2) an analysis of the impact of aircraft noise on individuals residing near airports.

(d) Annual report.--Beginning with calendar year 1992--

(1) each air carrier shall submit to the Secretary an annual report on the progress the carrier is making toward complying with the requirements of this section and regulations prescribed under this section; and

(2) the Secretary shall submit to Congress an annual report on the progress being made toward that compliance.

(e) Hawaiian operations.--(1) In this subsection, "turnaround service" means a flight between places only in Hawaii.

(2)(A) An air carrier or foreign air carrier may not operate in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, a greater number of stage 2 aircraft with a maximum weight of more than 75,000 pounds than it operated in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, on November 5, 1990.

(B) An air carrier that provided turnaround service in Hawaii on November 5, 1990, using stage 2 aircraft with a maximum weight of more than 75,000 pounds may include in the number of aircraft authorized under subparagraph (A) of this paragraph all stage 2 aircraft with a maximum weight of more than 75,000 pounds that were owned or leased by that carrier on that date, whether or not the aircraft were operated by the carrier on that date.

(3) An air carrier may provide turnaround service in Hawaii using stage 2 aircraft with a maximum weight of more than 75,000 pounds only if the carrier provided the service on November 5, 1990.

(4) An air carrier operating stage 2 aircraft under this subsection may transport stage 2 aircraft to or from the 48 contiguous States on a nonrevenue basis in order--

(A) to perform maintenance (including major alterations) or preventative maintenance on aircraft operated, or to be operated, within the limitations of paragraph (2)(B); or

(B) conduct operations within the limitations of paragraph (2)(B).

(f) Aircraft modification, disposal, scheduled heavy maintenance, or leasing.--

(1) **In general.--**The Secretary shall permit a person to operate after December 31, 1999, a stage 2 aircraft in nonrevenue service through the airspace of the United States or to or from an airport in the contiguous 48 States in order to--

(A) sell, lease, or use the aircraft outside the contiguous 48 States;

- (B) scrap the aircraft;
- (C) obtain modifications to the aircraft to meet stage 3 noise levels;
- (D) perform scheduled heavy maintenance or significant modifications on the aircraft at a maintenance facility located in the contiguous 48 States;
- (E) deliver the aircraft to an operator leasing the aircraft from the owner or return the aircraft to the lessor;
- (F) prepare or park or store the aircraft in anticipation of any of the activities described in subparagraphs (A) through (E); or
- (G) divert the aircraft to an alternative airport in the contiguous 48 States on account of weather, mechanical, fuel, air traffic control, or other safety reasons while conducting a flight in order to perform any of the activities described in subparagraphs (A) through (F).

(2) Procedure to be published.--Not later than 30 days after the date of the enactment of this subsection, the Secretary shall establish and publish a procedure to implement paragraph (1) through the use of categorical waivers, ferry permits, or other means.

(g) Statutory construction.--Nothing in this section may be construed as interfering with, nullifying, or otherwise affecting determinations made by the Federal Aviation Administration, or to be made by the Administration with respect to applications under part 161 of title 14, Code of Federal Regulations, that were pending on November 1, 1999.

§ 47529. Nonaddition rule

(a) General limitations.--Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into the United States after November 4, 1990, only if the aircraft--

- (1) complies with the stage 3 noise levels; or
- (2) was purchased by the person importing the aircraft into the United States under a legally binding contract made before November 5, 1990.

(b) Exemptions.--The Secretary of Transportation may provide an exemption from subsection (a) of this section to permit a person to obtain modifications to an aircraft to meet the stage 3 noise levels.

(c) Aircraft deemed not imported.--In this section, an aircraft is deemed not to have been imported into the United States if the aircraft--

(1) was owned on November 5, 1990, by--
(A) a corporation, trust, or partnership organized under the laws of the United States or a State (including the District of Columbia);
(B) an individual who is a citizen of the United States; or
(C) an entity that is owned or controlled by a corporation, trust, partnership, or individual described in subclause (A) or (B) of this clause; and
(2) enters the United States not later than 6 months after the expiration of a lease agreement (including any extension) between an owner described in clause (1) of this subsection and a foreign carrier.

§ 47530. Nonapplication of sections 47528(a)-(d) and 47529 to aircraft outside the 48 contiguous States

Sections 47528(a)-(d) and 47529 of this title do not apply to aircraft used only to provide air transportation outside the 48 contiguous States. A civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into a noncontiguous State or a territory or possession of the United States after November 4, 1990, may be used to provide air transportation in the 48 contiguous States only if the aircraft complies with the stage 3 noise levels.

§ 47531. Penalties for violating sections 47528-47530

A person violating section 47528, 47529, or 47530 of this title or a regulation prescribed under any of those sections is subject to the same civil penalties and procedures under chapter 463 of this title as a person violating section 44701(a) or (b) or any of sections 44702-44716 of this title.

§ 47532. Judicial review

An action taken by the Secretary of Transportation under any of sections 47528-47531 of this title is subject to judicial review as provided under section 46110 of this title.

§ 47533. Relationship to other laws

Except as provided by section 47524 of this title, this subchapter does not affect--

- (1) law in effect on November 5, 1990, on airport noise or access restrictions by local authorities;
- (2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990; or
- (3) the authority of the Secretary of Transportation to seek and obtain legal remedies the Secretary considers appropriate, including injunctive relief.

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