



U.S. Department
of Transportation
**Federal Aviation
Administration**

Date: Feb 3, 1995

From: Director, Airport Planning and Programming, APP-1

To: ANM-600

Attn: Matthew J. Cavanaugh

Prepared by: Paul L. Galis

Subject: ACTION: Compliance of Aspen-Pitkin County Airport With ANCA

This responds to your request for advice concerning whether Pitkin County's enactment of Ordinance No. 94-27 on November 15, 1994, restores compliance with Subchapter II of chapter 475 of title 49 USC (the former Airport Noise and Capacity Act of 1990 (ANCA)). The headquarters Part 161 Review Team has determined that compliance with ANCA is restored, for the reasons explained below.

In Section 517 of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103-305), Congress mandated that Pitkin County, as owner and operator of Aspen-Pitkin County Airport (ASE), be considered in compliance with ANCA and not otherwise unjustly discriminatory, when the County notified the FAA Administrator that it committed (1) to modify its existing regulation to expand access to general aviation operations. under special operating restrictions and conditions that apply to current night operations and (2) permanently not to enforce its 1990 regulatory action eliminating the so-called "ski season exception" to its nighttime curfew. To remain in compliance, the County was required to carry out both commitments by November 1, 1994.

We are not aware of any actions taken by the County to fulfill the requirements of Public Law 103-305 before adopting Ordinance No. 94-27 on November 18, 1994. The County is deemed to have notified the FAA Administrator and to have carried out both commitments when it adopted this Ordinance. The first commitment is met by the provisions of Ordinance 94-27 that expand access as contemplated by Public Law 103-305.

The second commitment concerning the "ski season exception" is met by Section 6-39b(b) of Ordinance 94-27, entitled "Commitments of Airport Owner or Operator." This section of the Ordinance simply incorporates the language of Public Law 103-305 verbatim. The decision of the County to incorporate the requirement to agree permanently not to enforce the subject regulatory action is considered to evidence its intent to make this commitment. Although the County did not adopt the Ordinance until November 18, we have determined

that it has restored compliance with ANCA. Consequently, the question of Pitkin County's compliance with ANCA is no longer a factor in assessing its eligibility as a sponsor under the AIP or as a public agency applicant to collect passenger facility charges.

The restriction limiting nighttime operations by general aviation to Stage 3 aircraft does not affect the County's eligibility. This restriction is not subject to ANCA or grant requirements because it has been Congressionally mandated as part of ASE's expansion of nighttime - access. Congress permitted the County to restrict nighttime general aviation operations to "such conditions applicable to aircraft noise certification as are currently in effect for night operations at such airport." The conditions then in effect included a Stage 3 limitation on nighttime operations by scheduled air carriers. (See Section 6-38, Ordinance No. 89-3.)

A Federal Register Notice has been drafted to terminate the proceeding that the FAA initiated in October 1994 pursuant to Subpart F of 14 CFR Part 161.

This response has been coordinated with the Office of Policy, Planning, and Management Analysis; the Office of Environment and Energy; and the Office of the Chief Counsel.

Paul L. Galis