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

Jun 9, 1999

Ms. Rebecca Zwart
Metropolitan Airports Commission
6040 - 28th Avenue South
Minneapolis, MN 55450

Dear Ms. Zwart:

The Federal Aviation Administration (FAA) has reviewed the Metropolitan Airports Commission's (MAC) submittal supporting the proposed ordinance. As of January 1, 2000, MAC's ordinance would prohibit, at Minneapolis-St. Paul International Airport, operations of all aircraft weighing greater than 75,000 pounds which exceed Stage 3 noise limits.

FAA's role in providing these comments is two-fold. The FAA's primary role under Part 161, section161.205, is oversight of the regulation, which includes ensuring that procedural requirements for the proposed airport noise and access restrictions fully comply with the regulatory requirements. Our secondary role as a commenting party includes detailed review of the substance of the proposal for compliance with other Federal requirements.

The Federal government granted certain air carriers until May 31,1999, to file supplemental information for a waiver from Stage 3 noise requirements by the year 2000. The FAA cannot begin to assess these applications until the status of carriers is determined on July 1, 1999. This factual uncertainty makes any analysis of benefits and costs at this juncture hypothetical at best.

From the information contained in the submission, it appears that this type of restriction is federally preempted. This issue is discussed briefly in the enclosure, and FAA is fully prepared to provide more detail upon request. The FAA requests elaboration of the rationale that supports MAC's apparent view that the proposed ordinance would be consistent with Federal law.

MAC's submittal clearly indicates that consultation with affected air carriers has taken place and that a cooperative spirit appears to exist. This evidence of mutual concern and cooperation is encouraging as MAC moves forward with its efforts to comply with this state-mandated proposal. In view of this success, I urge MAC to continue this process via the less formal route of a voluntary agreement. More specific comments on the procedural requirements of Part 161 and on the content of the analysis documentation are enclosed. If

you have any questions or wish to discuss these comments, please contact Mr. Glen Orcutt, (612) 713-4350, of our Minneapolis Airports District Office.

Sincerely,

Louise E. Maillett
Acting Associate Administrator for Airports

Enclosure

Enclosure to FAA Comments on
Metropolitan Airports Commission (MAC) - Airport Noise and
Access Restriction - May 1999

Federal Preemption

The FAA is concerned that the type of restriction MAC is attempting to impose in the Ordinance would be preempted by Federal law. Federal law generally preempts airport access matters, including aircraft noise abatement, because Federal preemption is essential to maintain a unified and coordinated national air transportation system. The United States Supreme Court, citing the "pervasive nature of the scheme of federal regulation of aircraft noise," has concluded that state and local regulation in this area is preempted. City of Burbank v. Lockheed Air Terminal, 411 U.S. 624, 633 (1973). Citing Burbank, the Minnesota Supreme Court has held that the Minnesota Pollution Control Agency's noise regulations are preempted by federal law as applied to MAC's operation of the Minneapolis-St. Paul International Airport. State of Minnesota v. Metropolitan Airports Commission, 520 N.W.2d 388 (Minn. 1994).

According to MAC, the ban on Stage 2 operations is being proposed to "enforce" a policy that is being mandated by the State of Minnesota. In practical effect, the restriction is being imposed upon the airport proprietor by the State. Therefore, the narrow exception to preemption that governs restrictions adopted by airport proprietors does not apply. See San Diego Unified Port Dist. v. Gianturco, 457 F. Supp. 283,292 (S.D. Cal. 1978), affd 651 F.2d 1306 (9th Cir.1981), cert. denied sub. nom., Dept. of Transp. v. San Diego Unified Port Dist., 455 U.S. 1000 (1982). In addition, the FAA is concerned about the reasonableness of the proposed restriction given its lack of any significant noise benefits. See British Airways Board v. Port Authority of New York and New Jersey, 564 F.2d 1002, 1014 (2d Cir. 1977) (Mansfield, J. concurring in part). Depending upon the extent of Federal waivers, if any, granted under ANCA or under pending legislation, the Ordinance could also result in an undue burden on interstate or foreign commerce, particularly if similar restrictions were imposed at other airports.

Compliance with Procedural Requirements of 14 CFR Part 161

Please provide proof of publication in accordance with section 161.203(b); and proof of direct notice.

Comments on the Ordinance

Enforcement is vague. What existing laws or provisions will apply?

It is presumed that, under "Emergency Exemption", the term "air carriers" applies to both passenger and cargo operators under Part 121. Please inform us if this is not the case.

Comments on the Analysis

The benefits analysis needs more specific identification of areas near the airport that would be benefited by the proposal. Table 1 of the study presents the findings of the noise analysis for forty-one specific locations. It would be helpful to depict these locations on a map. Exhibits such as those found in a Part 150 study would be appropriate. Given the minimal change in DNL noise levels, supplemental analysis may be useful to provide additional information on specific noise benefits.

MAC indicates that, in order to comply with the notice requirements of Part 161 and the state's statutory deadline, it will provide a less than detailed benefit-cost analysis. The analysis submitted presupposes that future operations will be the same as those of the recent past period, but recognizes that substantial change could occur. No specific costs or benefits are provided in the study. This level of analysis would be clearly insufficient if it were presented under Part 161, Subpart D, a restriction on Stage 3 aircraft. The analysis is skimpy and avoids any mention of actual monetary costs. A Subpart C, Stage 2, restriction study should attempt to quantify the benefits and costs even if these appear to be de minimis.

MAC also appears to have rejected out-of-hand the use of voluntary agreements. FAR 161, Subpart B, could be used as a framework for establishing an agreement in lieu of this proposed rule. MAC has a history of successfully utilizing such agreements for this purpose. FM strongly encourages MAC to utilize Subpart B or an alternative procedure of its own design for accomplishing voluntary agreements on a Stage 2 restriction. FAA believes this approach would adequately address the Minnesota statutory mandate without raising other issues under Federal law. MAC apparently has already secured the commitment of most if not all parties and would only need to formalize such agreements among the parties. Other airports have successfully accomplished this objective, and the FAA has confidence that given Minnesota's tradition of respect and civility MAC could accomplish this objective at MSP.

Insert "percent" after "98" (page 4, second paragraph).

Follow-on communication with ABX Air, Inc. would need to provide ABX Air's confirmation or clarification of the assumptions made on page 6, third paragraph. A lack of comment by ABX Air, Inc. within the comment period, may be sufficient to conclude that ABX does not disagree with the analysis.

The conclusory paragraph under "Maintenance Operations", page 1O, seems premature. MAC should supply written commitments from its based aircraft maintenance facilities to document the conclusion that no maintenance operations of Stage 2 aircraft would be provided at MSP.