



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

ORLANDO AIRPORTS DISTRICT OFFICE
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ORLANDO, FLORIDA 32827-5397

Sept 9, 1992

Mr. Vern Munroe
Manager, Aviation Technical Services
Greater Orlando Aviation Authority
One Airport Boulevard
Orlando, Florida 32827-4399

Dear Mr. Munroe:

This responds to your letter dated December 6, 1991. Your letter asserted that the mandatory nighttime access restrictions included in the Noise Compatibility Program (NCP) for Orlando Executive Airport are not subject to the Airport Noise and Capacity Act of 1990, 49 U.S.C. app. 2151 et seq. (ANCA). Based on additional information provided by your staff, the Federal Aviation Administration (FAA) has reconsidered the opinion expressed in our October 31, 1991, letter. For the reasons explained below, we reaffirm our opinion that ANCA applies.

ANCA applies to airports imposing restrictions on Stage 2 aircraft operations proposed after October 1, 1990. This includes airports enacting amendments to restrictions adopted prior to October 1, 1990, where the amendments are proposed after that date and limit or restrict operations or safety.

The Greater Orlando Aviation Authority (Authority) claims that the mandatory nighttime restrictions and enforcement procedures in the NCP were proposed on August 17, 1988. This claim, however, appears to be contradicted by the NCP and by the letter from the Authority dated June 18, 1992. The NCP states that the nighttime restrictions proposed--and--adopted on August 17, 1988, were voluntary (See NCP at 12-10, 12-14). The June 1992 letter also verifies that the restrictions proposed and adopted on August 17, 1988, are voluntary, not mandatory. Since the mandatory measures in the NCP were not proposed before October 1, 1990, the NCP measures are not "grandfathered" under ANCA.

ANCA applies even if we assume, for the sake of argument, the Authority initially proposed mandatory nighttime restrictions in 1988. Once the restrictions were adopted and

implemented as voluntary, no "proposed" mandatory restrictions remained that could form a basis for grandfathering subsequent restrictions. ANCA also applies according to the provisions governing amendments to existing restrictions. Amendment of the current restrictions to convert them into mandatory requirements will clearly limit or restrict aircraft operations because it will tighten the current restrictions. See 14 C. F.R. 161.201 (a)(2).

The Authority appears to believe that it proposed the mandatory restrictions within the meaning of ANCA by including them as recommendations in the NCP. This is based on a misunderstanding of NCPs. The NCP is a planning document similar to a master plan study. The NCP is not a means for legally proposing noise and access restrictions. To comply with ANCA, the FAA requires evidence of a proposed restriction within draft ordinances or other draft regulatory documents. The Authority also maintains that even if ANCA applies, these restrictions were adopted in compliance with 14 C.F.R. Part 161 because the Authority included them in an NCP prepared pursuant to 14 C.F.R. Part 150. This is not correct because, while there is some overlap between Part 161 and Part 150, the former has distinct notice and analysis requirements. Due to the overlap, the Authority will be able to use and supplement much of the notice and analysis prepared in the NCP to satisfy Part 161 (See 161.211).

The FAA is willing to consider any further evidence that the Authority wishes to provide to demonstrate that these mandatory restrictions in the NCP are "grandfathered" or qualify for a specific exemption under ANCA. For example, grandfathering would be substantiated by evidence that a mandatory version of the restrictions was proposed in a draft ordinance or other regulatory document that was submitted to the Authority on April 24, 1990, or anytime before October 1, 1990. Absent other evidence, it is our opinion that these measures are subject to ANCA. We appreciate your responsiveness on this issue and would like to work with you to achieve your noise abatement goals. If there is any additional information that you wish to present, we will review it and make a supplemental determination. The Part 150 NCP is under final review and a final determination will be issued on or before October 21, 1992.

Sincerely,

Charles E. Blair
Manager