



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

Mar 9, 2001

Mr. David Chapman  
Port Authority  
Port of San Diego and  
Lindbergh Field Air Terminal  
P. O. Box 488  
San Diego, CA 92112

Dear Mr. Chapman:

Thank you for your letter of December 13, 2000, providing additional information regarding the San Diego Unified Port District's ("the District") proposal to modify the administrative penalty structure for unlawful curfew operations at San Diego International Airport ("SDIA"). We appreciate your willingness to consult with us to assure compliance with applicable Federal laws and recognize that the District has expended considerable time and effort to resolve its curfew compliance problems at SDIA. Based on all of the information the District has provided, it is our opinion that the District's proposal "does not reduce or limit aircraft operations or affect aircraft safety" and therefore is not subject to the Airport Noise and Capacity Act of 1990 ("ANCA").

In rendering this opinion, we rely upon the District's representation, supported by the information the District has provided, that it has not been the District's practice to sanction curfew operations that legitimately result directly from weather, mechanical malfunction, or FAA Air Traffic Control delays. Regardless of how the District would define a willful violation, based upon the limitation of the curfew to departures and the inclusion of appropriate emergency exceptions, we agree that it is very unlikely that the proposed escalation in fines would negatively impact safety or service levels by carriers operating at SDIA. Should the FAA receive additional relevant information not heretofore available regarding the District's proposal, the FAA reserves the right to revise its opinion based on that information.

This letter supplements our letter of August 8, 2000, and is limited to the specific issue of the applicability of ANCA to the District's proposal described in your letter of December 1, 1999. This letter is not an appealable final agency order within the meaning of 49 U.S.C. § 46110. It does not address the ability of an airport user adversely affected by the 1989 restrictions, or the proposed amendments thereto, to challenge any aspect of them.

Sincerely ,

James W. Whitlow  
Deputy Chief Counsel