



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

Apr 17, 2000

Mr. Breton K. Lobner
Senior Assistant City Attorney
Office of the City Attorney
1 World Way
P.O. Box 92216
Los Angeles, CA 90009

Dear Mr. Lobner:

This is a follow-up to my February 18 letter regarding Van Nuys Airport. I am responding to the following question that was posed in your January 27 letter; your other questions were addressed in my February 18 response. You asked:

"Whether the grandfather authorization granted by the FAA for the non-addition rule at Van Nuys Airport pertains to the proposed 1990 phase-out rule or whether the 1990 proposed Van Nuys phase-out is also grandfathered under the provisions of ANCA and 14 CFR Part 161?"

Your question focuses on whether the "phase-out rule" proposed in 1990 is grandfathered under the Airport Noise and Capacity Act of 1990 (ANCA), an issue the FAA has not specifically addressed to date. Section 47533(2) of ANCA provides that, except as provided in Section 47524, the statute "does not affect... 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." (Section 47524 applies to airport noise and access restrictions proposed after October 1, 1990, with exceptions not here relevant.)

The proposed 1990 "phase-out" rule (section 3 of Exhibit D to your January 27 letter) would have "phased out" Stage 2 aircraft exceeding certain takeoff noise levels in four phases over a period of seven years beginning in 1991. At the end of this period, all aircraft with certified takeoff noise levels of 77 dB A or higher would have been prohibited from operating at VNY. The originally proposed phase-out dates have now passed (the last was January 1, 1998). As you stated in your January 27 letter, adoption of the phase-out rule now "would prohibit the operation at Van Nuys Airport of all aircraft exceeding 77 dBA " No such immediate ban was proposed in 1990. Thus, immediate implementation of a 77 dBA

noise limit is, in effect, a very different "proposal" than was in the proposed 1990 "phase-out" rule. As a result, it is not exempt or grandfathered under Section 47533(2) of ANCA.

The current proposed rule is not comparable to the staged airport noise and access programs that are exempt under Section 47524(d)(6) of ANCA. As we have previously notified airport proprietors, a proposal would have to be essentially the same as originally proposed or less restrictive than originally proposed to retain its grandfather status under ANCA. If the City elects to reconsider the proposed 1990 "phase-out" rule along these lines, then the FAA would review such a proposal together with the City's reasons that would support a finding that the proposal qualifies for grandfathering and is indeed essentially unchanged or less restrictive.

This is not an appealable final agency order within the meaning of 49 U.S.C. 46110. This letter focuses upon the applicability of ANCA to the proposed "phase-out" rule. In addition to ANCA, airport noise and access restrictions must also meet standards under pre-existing federal law, including federal grant obligations. Such restrictions must be fair and reasonable, may not be unjustly discriminatory, and may not impose an undue burden on interstate or foreign commerce. Based upon the information available, FAA has serious concerns about the ability of the "phase-out" rule to meet these requirements. The City of Los Angeles would have to thoroughly examine these requirements as part of the local process to consider its adoption. A determination of noncompliance would affect the eligibility of the City of Los Angeles to continue to receive grants of federal funding at all airports owned by the City.

hope this letter is responsive to your request. This response has been coordinated with our Office of the Chief Counsel. As an alternative to mandatory restrictions, we encourage the City to pursue discussions with airport users about potential voluntary measures to obtain desired noise reductions at Van Nuys Airport. The FAA would be happy to assist in voluntary discussions and answer any additional questions you or the City Council may have on this matter.

Sincerely,

Woodie Woodward
Acting Associate Administrator for Airports