



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

July 17, 1996

The Honorable John Ferraro
President, Council of the City of Los Angeles
Los Angeles City Hall, Room 395
200 North Spring Street
Los Angeles, California 90012

Dear Mr. Ferraro:

The Federal Aviation Administration (FAA) has received a copy of Resolution 19529, recently passed by the Los Angeles Board of Airport Commissioners (BOAC) and an April 1, 1996, staff report by the Los Angeles Department of Airports (LADOA) to the Board which accompanied the resolution. The restriction proposed in the resolution would be subject to the Airport Noise and Capacity Act of 1990 (ANCA), 49 USC section 47521 et seq., as it applies to Stage 3 aircraft operations and must, therefore, be approved by the FAA. The proposal constitutes an amendment to an existing restriction which would further reduce or limit access to the VNY airport.

This letter is to make the City Council aware that to enact this resolution without compliance with ANCA will put at risk all Federal funding and collection of passenger facility charges at all airports under the jurisdiction of the city.

The FAA is issuing this letter in the spirit of advising the City of Los Angeles of our sincere concern that the city not inadvertently through a misunderstanding of Federal law take a step that could place it in violation of ANCA and 14 CFR Part 161. We are prepared to discuss available options and to work with the LADOA to reduce noise impacts in the vicinity of VNY in a manner that ensures continued compliance with ANCA and Part 161 and with other applicable Federal laws.

A copy of this letter has also been sent to the LADOA and Board of Airport Commissioners.

Sincerely,

/s/ Susan L. Kurland
Associate Administrator for Airports

Enclosure

cc: Jack Driscoll, Los Angeles
Department of Airports
Daniel Garcia, Board of Airport Commissioners

ATTACHMENT -DETAILED COMMENTS

Summary

The Federal Aviation Administration (FAA) has reviewed a copy of Resolution Number 19529 that was adopted by the Los Angeles Board of Airport Commissioners (BOAC). Included with the Resolution was a staff report dated April 1, 1996, that was prepared by the Los Angeles Department of Airports (LADOA). Resolution Number 19529 proposes to amend the VNY Noise Control Ordinance to extend by one (1) hour the existing decibel-limited aircraft departure curfew at Van Nuys Airport (VNY). Currently the curfew begins at 11:00 p.m. and ends at 7:00 a.m. the following day. Resolution 19529 recommends modifying the departure curfew period to begin one hour earlier at 10:00 p.m.

The FAA has commented to the LADOA and City Council on prior occasions concerning the proposed 1-hour curfew extension at VNY. (January 14, 1994, letter to Breton Lobner, Assistant City Attorney, from Dale McDaniel, Assistant Administrator for Policy, Planning and International Aviation, FAA; January 13, 1993, letter to Donald Miller, Los Angeles Department of Airports, from Dale McDaniel) The FAA has advised airport officials and the City Council that this 1-hour extension raises issues of compliance with the Airport Noise and Capacity Act of 1990 (ANCA) , 49 U.S.C. 47521 et seq., because it would constitute an amendment to an existing restriction which would further reduce or limit access to the VNY airport.

Failure to comply with ANCA is subject to administrative sanction under 49 USC 47526 as implemented by 14 CFR Part 161, Subpart F. Title 49 USC 47526 provides that airport operators that are imposing airport noise or access restrictions not in compliance with ANCA may not receive revenues under the provisions of 49 USC 47101 et seq. (the former Airport and Airway Improvement Act of 1982) or impose or collect a passenger facility charge under 49 USC 40117 (Section 1113(e) of the former Federal Aviation Act of 1958). These sanctions would affect not only VNY' but also all other airports owned and operated by the City of Los Angeles. In addition, ANCA does not supersede or eliminate any appropriate legal remedies available under pre-existing law, including Federal grant assurances. 49 USC 47533.

Title 14 CFR 161.501(b) further provides that "Recission of, or a commitment in writing signed by an authorized official of the airport operator to rescind or permanently not enforce, a non-complying restriction will be treated by the FAA as action restoring compliance with the Airport Noise and Capacity Act of 1990 or this part with respect to that restriction."

Discussion of Resolution 19529 and April 1, 1996, Staff Report

The April 1, 1996, staff report claims that the proposed curfew extension is grandfathered because it was first considered and proposed in 1988. The staff report also claims that the curfew is grandfathered under 49 USC 47533(2), as implemented by 14 CFR Part 161.7(d) (2). Based on our review of the information submitted by the City to date concerning the

proposal, the FAA agrees, in part, with the conclusion of the staff report that ANCA does not apply. Specifically, the Stage 2 restrictions in Resolution 19529 are exempt from the notice and analysis requirements of ANCA under 49 USC 47533(2). That section of the law states that "Except to the extent required by Section 47524 of this title, this subchapter does not affect...Any proposed airport noise or access regulation at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990..."

The Airport Board initiated the requisite process. It formally proposed the 1-hour departure curfew extension on or before October 1, 1990, by adopting Board Resolution 17154 on June 13, 1990. VNY is designated as a general aviation airport in the National Plan of Integrated Airport Systems, and there is no scheduled commercial or air carrier service to or from VNY. There is nothing in Section 47524 of the law that prevents the implementation of the Stage 2 restriction in the 1-hour curfew because the curfew was clearly proposed before October 1, 1990. It should be noted that this determination is not an opinion concerning the ability of an airport user adversely affected by any subsequently-adopted ordinance to challenge a revised proposal under preexisting law.

On the other hand, the curfew was not in effect before that date. Because 49 USC 47533(2) applies "Except to the extent required by Section 47524," and 49 USC 47524(c) only grandfathers Stage 3 aircraft restriction in effect before October 1, 1990, the city must comply with ANCA (49 USC 47524(c) and Subpart D of Part 161 to impose the Stage 3 restrictions in the curfew extension. The economic analysis summarized in the April 1996 staff report and the draft study "Economic Impact of Noise Control Regulation Proposed for Van Nuys Airport" dated January 19, 1995, that were informally submitted to the FAA do not satisfy these requirements. These requirements include approval by the FAA. The April 1, 1996, staff report miss-apprehends two additional matters.

The "Findings" of the April 1 report erroneously assert that FAA desires restrictions to be based on "stage" rather than decibel criteria (Finding 9). The report also incorrectly assumes that any determination to raise the departure curfew decibel noise level limit to allow Stage 3 aircraft to depart would have to apply to the entire nine hour departure curfew period (Finding 10). There appear to be alternatives that the City could adopt to satisfy both ANCA and other applicable Federal law:

Under current FAA policy, a decision to apply the one-hour curfew extension to operations by Stage 2, but not Stage 3, aircraft, would not be per se unjustly discriminatory.

ANCA would not apply to a determination by the City Council to adopt, for the additional hour, a departure curfew noise level that does not impact operations by Stage 3 aircraft capable of operating at VNY. This type of an amendment to the grandfathered, Stage 2 portion of the curfew extension is an amendment that does not further limit access and would be exempt under 49 USC 47524(d) (4). It would also appear to render any potential issues of unjust discrimination moot.

Other alternatives include purely voluntary proposals or written agreements. Purely voluntary, "best-effort" proposals are not subject to ANCA. The FAA urges the LADOA to continue consultation with the aviation community to obtain satisfactory voluntary compliance with an extended nighttime operational limit. A written agreement with airport users would fall outside the scope of ANCA and Part 161 when it is voluntarily entered into and applied only among signatories. Subpart B of Part 161 also provides for written agreement among the airport operator and all operators of Stage 3 aircraft affected by the proposed restriction that are serving or will be serving the airport within 180 days of the date of the proposed restriction. A restriction implemented by an airport operator pursuant to Subpart B shall have the same force and effect as if it had been a restriction implemented in accordance with Subpart D.

Relationship to the 14 CFR Part 150 Airport Noise Compatibility Planning Process

The April 1, 1996, staff report states that the 1-hour curfew extension was first proposed in 1988. This staff conclusion appears to be based on a December 1992 city report to the Mayor which concluded that the 1- hour curfew extension qualified for "grandfathering" because it was examined as part of an airport noise compatibility planning process initiated under 49 USC 47501, as implemented by 14 CFR Part 150.

Studies done under Part 150 are planning documents and are 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 regulatory documents issued by the airport proprietor.

The April 1 staff report also implies, under the heading "FAA Considerations," that the FAA has somehow endorsed the measure because it was studied as part of the Part 150 planning process and because FAA representatives participated on the Technical Committee. FAA technical advice as a committee member does not constitute endorsement or approval of any measure in an airport sponsor's Noise Compatibility Program (NCP). FAA approval or disapproval is based solely upon whether statutory criteria are satisfied.

The FAA understands that the LADOA has taken steps to reinitiate the Part 150 study at VNY that was halted in 1993. Upon submittal of acceptable Noise Exposure Maps (NEMs), the FAA will be able to provide advice on the NCP. Since the proposed curfew extension appears to be identical to one of the measures contained in the incomplete Part 150 study, the FAA encourages the city of Los Angeles to complete the study pursuant to the requirements of 14 CFR Part 150. Addressing applicability of other Federal laws is required in a Part 150 study; thus, this may be the most convenient means to conduct an analysis on any potential discriminatory effects. Completion of the Part 150 study would also provide valuable information to the city, the LADOA, the public, and the FAA concerning the relationship of the curfew extension to the noise problem and the restriction's benefits in addressing that problem.

Should the LADOA wish to pursue enactment of the curfew extension as currently proposed, continuation of the Part 150 study will also provide the LADOA and the city of Los Angeles a means to continue its analysis of the proposal under 14 CFR Part 161 as it relates to Stage 3 aircraft operations at VNY. Title 14 CFR Part 161.321, *Optional use of 14 CFR part 150 procedures*, addresses how to combine the Part 150 and 161 processes. FAA staff is available to advise the LADOA on the requirements of both parts.