



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

Aug 28, 1997

Mr. Breton K. Lobner
Senior Assistant City Attorney
Office of the City Attorney
1 World Way
P.O. Box 92216
Los Angeles, CA 90009-2216

Dear Mr. Lobner:

This responds to your May 2 letter concerning curfew, non-addition, and helicopter regulations at Van Nuys Airport (VNY).

I appreciate your sincere and vigilant efforts over the past several months to resolve the concerns of the Federal Aviation Administration (FAA) before the City Council took action on Resolution 19529. Since June 1990, when the city made its first curfew and non-addition proposals, FAA officials have been informally working with you and other city officials to address various proposals to amend the 1981 VNY Noise Control Regulation. The curfew and non-addition regulations and the proposed new helicopter regulations are addressed below.

In your May 2 letter, you explained the city's latest proposals to revise its Noise Control Ordinance. You provided a draft ordinance for our consideration as an attachment to an earlier letter dated April 14. Based upon our review of all information provided, action by the city of Los Angeles, as owner of VNY, to extend application of the decibel limit on nighttime departures by 1 hour from 11 p.m. to 10 p.m. and to adopt a non-addition rule on operations by Stage 2 aircraft, as described in the draft ordinance and revised according to your May letter, would be exempt from the notice and analysis requirements of 14 CFR Part 161 and the former Airport Noise and Capacity Act of 1990 (ANCA), as recodified at 49 U.S.C. 47521 et seq. Specifically, the Stage 2 restrictions in the proposal would be exempt under 49 U.S.C. 47533. Further, the approach that you have outlined to address operations by Stage 3 aircraft would satisfactorily resolve the concerns expressed in the FAA's letter to the President of the City Council, John Ferraro, dated July 17, 1996. Detailed comments on the draft ordinance, as revised by letter dated May 2, are enclosed.

You also provided a draft helicopter curfew regulation and requested clarification regarding the applicability of ANCA and Part 161 to such regulations. Enclosed is a copy of a letter that the FAA recently sent to the Helicopter Association International. In that letter, we clarified that ANCA applies to proposed restrictions on helicopters as Stage 2 aircraft.

This is not an opinion concerning the ability of an airport user adversely affected by any amendment to challenge any aspect of it, except as to one aspect relating to unjust discrimination, nor is it an appealable final agency order within the meaning of 49 U.S.C. 46110. The information submitted by the city does not disclose a complete analysis or conclusions regarding effects of the curfew or non-addition rule on operators at VNY. We note that any proposals to "grandfather" Stage 2 aircraft based at VNY and "exempt" Stage 2 aircraft that visit the airport for major repairs and refurbishment should enhance the reasonableness of the proposal under other applicable Federal laws and requirements. As a matter of policy, the FAA does not consider the use of aircraft stage designations in combination with single event noise limits to be unjustly discriminatory per se. Properly-comparing aircraft between stages means comparing aircraft of similar gross takeoff weights and, for a given weight, a Stage 3 aircraft will always be quieter than a Stage 2 aircraft based upon the classifications in the FAA Advisory Circular 36 series.

I hope this letter is helpful. The FAA pledges its continued support to the city in its efforts to develop balanced programs to improve airport noise compatibility.

Sincerely,

Susan L. Kurland

Associate Administrator for Airports

Enclosures

ENCLOSURE -Analysis of the Applicability of Airport Noise and Capacity Act (ANCA) to Resolution 19529 and the Draft Ordinance, as revised by Letter dated May 2, 1997

Curfew and Non-Addition Rule

In 1981 the City of Los Angeles adopted a Noise Control Ordinance which included a 74 decibel limit on nighttime departures from Van Nuys Airport (VNY). The curfew begins at 11 p.m. and ends at 7 a.m.

In June 1990, the City proposed to modify the departure curfew period to begin 1 hour earlier, beginning in 1996, and to adopt a non-addition rule. Resolution 19529, which was adopted by the Los Angeles Board of Commissioners and submitted to the FAA in April 1996, and the Draft Ordinance contain a departure curfew period and non-addition rule identical to those in the June 1990 proposal.

As the FAA previously advised the city in testimony before the Board of Commissioners at a public hearing in June 1990, and by letters dated November 10, 1992, January 14, 1994, and July 17, 1997, this 1-hour extension raises issues of compliance with the former ANCA, as recodified at 49 U.S.C. 47521 et seq. Unless it qualifies for a special exemption from the provisions of ANCA, extension of the curfew departure period would be subject to ANCA because it would constitute an amendment to an existing restriction that further reduces or limit access to VNY.

Based upon FAA review of all of the information submitted by the city, the FAA has concluded that the Stage 2 restriction in the Draft Ordinance is exempt from the notice and analysis requirements of ANCA under 49 U.S.C. 47533(2) and 14 CFR 161.7(d) (2). That section of the law states, in relevant part: "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.

Title 49 U.S.C. 47533(2) applies, "Except to the extent required by Section 47524." Title 49 U.S.C. 47524(c) requires notice, analysis, and FAA approval of restrictions on operations by Stage 3 aircraft that were not in effect before October 1, 1990. Reading these provisions together, so as to give meaning to each provision, the city must comply with 49 U.S.C. 47524(c), to impose the extended curfew departure period upon operations by Stage 3 aircraft. The economic analysis summarized in the April 1996 Staff Report, provided with the Resolution, and the draft study "Economic Impact of Noise Control Resolutions Proposed for Van Nuys Airport" dated January 19, 1995, that were informally submitted to the FAA do not satisfy these requirements. By letter dated May 2, 1997, the

Senior Assistant City Attorney has stated that the city is willing to extend the curfew departure period and apply the non-addition rule only to operations by Stage 2 aircraft. This proposal would eliminate any requirement to comply with 49 U.S.C. 47524(c), as implemented by 14 CFR Part 161 Subpart D.

Non-Addition Rule; Grandfathering and Exemption Provisions

The proposal in the May 1997 Draft Ordinance specific to the non-addition rule--to "grandfather" Stage 2 aircraft based at Van Nuys and "exempt" Stage 2 aircraft that visit the airport for major repairs and refurbishment would not be subject to ANCA. These amendments do not further limit access under 14 CFR 161.7 (b) (4) and 49 U.S.C. 47524 (d) (4).



US Department
of Transportation
Federal Aviation Administration
800 Independence Ave. SW
Washington, DC 20591

July 7, 1997

Mr. Glenn Rizner
Vice President, Operations
Helicopter Association International
1635 Prince Street
Alexandria, VA 22314

Dear Mr. Rizner:

This is a follow-up to my previous letter concerning the provisions of the Airport Noise and Capacity Act (49 USC 47521 et seq., hereinafter "ANCA") and its implementing regulation at 14 CFR Part 161 as they pertain to helicopters. We apologize for the considerable length of time we have taken to develop the requested interpretation.

The plain statutory language of ANCA, Part 161, and other relevant data support applicability of ANCA and part 161 to helicopters. An operator of an "airport," defined in Section 161.5 to include heliports, that proposes noise or access restrictions which affect Stage 2 aircraft operations is required to comply with Subpart C of Part 161-Notice Requirements for Stage 2 Restrictions. "Stage 2 aircraft" is defined in 14 CFR Part 36, Appendices H and J, and includes helicopters. A "Stage 2" aircraft is defined in Section 161.5, and includes helicopters.

The airport or heliport operator must provide separate detail in its cost-benefit analysis, required by Subpart C, on the effects of the restriction on various user classes, including Stage 2 aircraft weighing less than 75,000 pounds when the restriction applies to that class. Section 161.5 defines "aviation user class" to include "other carriers operating under parts 127 and 135," which cover helicopter operations. The study conducted by FAA in accordance with section 9305 of ANCA points out that under the Act's language to exclude restrictions on these aircraft, including helicopters, could have the effect of earmarking them for restrictions, and that nothing in the study suggests that it would be appropriate to give these aircraft less protection than heavier aircraft against local restrictions. We note that there are currently no "Stage 3" helicopters, so applicability of ANCA under part 161, Subpart D -Notice, Review, and Approval Requirements for Stage 3 Restrictions, does not extend to helicopters.

I hope this information satisfactorily answers your inquiry. If you have additional questions, please feel free to contact me at (202) 267-3576.

Sincerely,

Original signed by

James D. Erickson
Director of Environment and Energy