

Airport Noise Report



A weekly update on litigation, regulations, and technological developments

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Litigation

APPEALS COURT RULES COMPLAINTS ARE VALID BASIS FOR FAA NOISE RESTRICTIONS

Noise complaints – if substantiated by names and dates – can be used by the Federal Aviation Administration instead of noise levels as the basis for enacting aircraft noise restrictions, the U.S. Court of Appeals for the District of Columbia Circuit held July 12.

The ruling is thought to be the first ever by a court affirming the use of complaint data as the basis for an FAA noise regulation, Denver attorney Peter Kirsch, an expert in aviation noise law, told ANR.

“The use of complaint data instead of DNL 65 as the basis for action is the most important component” of the Appeals Court ruling, stressed Kirsch, a partner in the law firm Kaplan Kirsch and Rockwell. He believes it will be cited by those pressing FAA to consider noise impact in designing RNAV/RNP routes into and out of airports as well as those seeking mandatory helicopter routes.

The ruling rejected the Helicopter Association International’s contention that public complaints about noise are not evidence of a noise problem absent objective,

(Continued on p. 87)

FAA

FINAL RULE ADOPTS BAN ON STAGE 2 JETS UNDER 75,000 LB. MANDATED IN FAA BILL

The operation of jets weighing less than 75,000 lb. that do not meet Stage 3 aircraft noise standards will be banned after Dec. 31, 2015, under a final rule issued by the Federal Aviation Administration on July 2.

FAA’s final rule codifies the statutory prohibition barring operations of Stage 2 jets under 75,000 lb. stipulated in Section 506 of the FAA Modernization and Reform Act of 2012 with some exceptions for temporary operations related to moving aircraft for modification or sale.

Of the 599 Stage 2 aircraft affected by the rule, some 413 are corporate jets that will have to be grounded or hushkitted to meet more stringent Stage 3 noise standards. That could be a difficult decision for some aircraft owners because the planes subject to the ban are between 25 and 50 years old, according to FAA.

“The final ruling, published on July 2, locks in the phase-out date established by Congress in the FAA Modernization and Reform Act of 2012, and it comes following extensive discussions between regulators and industry representatives to find a suitable timeframe in consideration of the time and costs necessary for operators to modify or replace their aircraft,” said the National Business Aviation Asso-

(Continued on p. 88)

In This Issue...

Litigation ... In major legal loss for helicopter operators, a three-judge panel of the D.C. Court of Appeals confirms that noise complaints, if substantiated with names and dates, can be used as sole basis for FAA noise restrictions; ruling upholds mandatory helicopter flight path off North Shore of Long Island - p. 86

Stage 2 Aircraft ... FAA issues final rule barring operations of Stage 2 aircraft under 75,000 lb. after Dec. 31, 2015 - p. 86

Helicopters ... NJ pols seek ban on tour traffic on NJ side of Hudson River - p. 87

T. F. Green ... Some 505 more homes in Warwick eligible for airport sound insulation program - p. 88

News Briefs ... Noise maps for Chicago Midway Int’l, Hawaii Hilo Int’l airports meet federal requirements ... FAA announces first AIP noise mitigation grant in fiscal 2013 - p. 89

Litigation, from p. 86

corroborating noise data that indicates noise levels exceed FAA's 65 dB DNL threshold of compatible residential use near airports.

Helicopter noise levels along the North Shore of Long Island were estimated to be less than 45 dB DNL, thus showing that a noise problem did not exist and invalidating FAA's rule imposing a mandatory helicopter route off the North Shore of Long Island, HAI argued.

But the Court rejected that assertion, ruling that "HAI has not identified any statutory or regulatory provision that sets 65 dB as the minimum noise level that must be reached before the FAA can regulate the impact of aircraft noise on residential populations."

FAA's 65 dB DNL threshold of compatible residential use near airports "was established for use in mapping noise exposure within the vicinity of airports, not residential areas far removed from an airport environment . . . It serves as a reference point from which the FAA can reasonably deviate when determining whether a particular noise reduction intervention is in the public interest," the Court wrote.

The three-judge panel denied HAI's petition for review of a final rule issued by FAA in July 2012 making mandatory an existing voluntary helicopter noise abatement route one mile off the North Shore of Long Island. The rule will sunset in two years if the FAA finds there is no "meaningful improvement in the effects of helicopter noise on quality of life or that the rule is otherwise unjustified."

The appellate ruling is a major loss for the helicopter association.

"HAI is deeply disappointed with the Court's ruling and respectfully disagrees with the decision. We are currently reviewing the Court's rulings as well as all options available to us with our Counsel," Matt Zuccaro, president and chief operating officer of HAI, told ANR.

But the ruling will be hailed by community groups and local governments pressing the FAA to impose similar mandatory routes elsewhere on helicopters, whose noise has become a major focus of noise complaints, especially in metropolitan areas where helicopters are increasingly being used for tours, to cover the news, view real estate, and ferry wealthy passengers over the heads of homeowners.

However, FAA has already said that it does not believe that mandatory helicopter routes would be feasible over Los Angeles County (25 ANR 78).

Broad Authority to Regulate Noise

The D.C. Court of Appeals panel rejected all four arguments HAI made in its challenge of the FAA mandatory helicopter route off Long Island's North Shore.

In addition to stipulating that documented noise complaints are an acceptable basis for FAA noise regulation, the panel also held that FAA has the legal authority to impose regulations on aircraft operations for the sole purpose of reducing noise impact in residential areas.

HAI argued that Congress had established a relatively narrow legal framework under which FAA can regulate noise and that FAA lacks authority to alter air traffic patterns for the sole purpose of reducing the impact of aircraft noise on residential communities.

But the Court disagreed saying that "Under the plain text of Section 40103 [of the Code of Federal Regulations] the FAA has authority to "prescribe air traffic regulations . . . [to] protect individuals and property on the ground."

"That is exactly what the FAA did here," the Court wrote. It said the dictionary definition of "protect" is broad enough "to encompass protection from noise caused by aircraft, and Congress would, absent indication to the contrary, have intended that the word be read in accordance with its natural meaning."

The panel said that nothing in federal law requires that safety be the primary goal of all FAA regulation. "So long as the FAA balances safety concerns appropriately, as it did here, its rulemaking decisions will not conflict with other statutory safety requirements."

The Appeals Court also rejected arguments by HAI that FAA had reversed longstanding policy of not altering flight patterns for the sole purpose of noise abatement.

"Rather than reversing past policy the FAA has acted in accordance with a longstanding, if infrequently used, interpretation of its authority under Section 40103," the Court wrote.

The Court also held that errors FAA made in estimating the additional fuel costs of flying the mandatory helicopter route off the North Shore of Long Island were not significant enough to invalidate its rule.

The case is *Helicopter Association International, Inc. v. Federal Aviation Administration* (No. 12-1335).

Helicopters

BAN ON TOUR TRAFFIC ON NJ SIDE OF HUDSON RIVER BEING SOUGHT

At a July 9 press conference, NJ Rep. Albio Sires (D) – joined by NJ Sen. Robert Menendez (D) and mayors and elected officials of municipalities along the Hudson River Waterfront – called on the Federal Aviation Administration to ban helicopter tour flights along the New Jersey side of the Hudson River.

The press conference addressed the growing concern of communities throughout New Jersey's 8th Congressional District regarding increased helicopter traffic and the safety and quality of life impact it brings.

"The practice of having helicopters fly at lower altitudes creates a constant noise nuisance and safety issues for those in NJ living along the Hudson River," said Congressman Sires. "I am pleased to have the widespread support of all the elected officials here today or their representatives, calling on the Federal Aviation Administration for a ban of tourist heli-

copter traffic along the New Jersey side of the Hudson River.

“As a member of the United States House of Representatives Transportation and Infrastructure Committee, I will work with my colleagues to propose legislation on the need to restrict tourist helicopter traffic and work with the FAA to restrict these tourist aircraft.”

“The number-one priority must be safety, for those on the ground as well as for pilots and anyone who boards a tourist helicopter to see the sights along the Hudson River,” said Sen. Menendez. “Given the amount of tourist helicopter traffic over the Hudson, an FAA restriction of those flights over the river’s New Jersey side makes sense. I commend Congressman Sires and the local government officials he is working with for proactively taking this initiative before a tourist helicopter tragedy occurs in New Jersey.”

“I strongly support the efforts of my good friend, Congressman Albio Sires, to reduce the quantity and improve the safety of helicopter traffic within the Hudson River air corridor,” said Hudson County Executive Tom DeGise. “The tourism industry’s desire to buzz by landmarks shouldn’t trump the rights of our waterfront residents to enjoy their homes in peace. And surely safety must take precedence over profit when it comes to regulating local airspace. I urge Congressman Sires’ colleagues on the House Transportation Committee, the FAA, and the Department of Homeland Security to heed his call for new, smarter regulations.”

Other local NJ officials calling for a ban on helicopter tour flights on the New Jersey Side of the Hudson River include the mayors of Hoboken, North Bergen, Union City, Guttenberg, West New York (NJ), and Bayonne as well as a Weehawken councilwoman and member of the Hudson County Board of Freeholders. The mayors of Union City and North Bergen also serve in the NJ State Senate.

T.F. Green Airport

505 MORE HOMES IN WARWICK ELIGIBLE FOR SOUND INSULATION

The number of homes in Warwick, RI, eligible for sound insulation in conjunction with a runway extension project and other safety and efficiency improvements at T.F. Green Airport increased from 157 to 662, under a Written Re-Evaluation and Record of Decision on the project announced by the Federal Aviation Administration on June 28.

The estimated cost to provide sound insulation for the additional 505 housing units is in the range of \$10 to 15 million.

FAA’s original Record of Decision on the project was issued in September 2011.

The additional homes eligible for sound insulation were identified through assessors records, correction of earlier misidentification of structures, and updated information on the number of homes insulated under a previous Part 150 noise compatibility program that was suspended over a decade ago.

Between 1989 and 2003, the Rhode Island Airport Commission (RIAC) completed the sound insulation of 1,510 parcels under T.F. Green’s suspended Part 150 Program. The total federal cost of the residential program was \$32.1 million in Airport Improvement Program (AIP) grant funding. In 2002, RIAC also sound insulated five schools with \$5.6 million in AIP funding.

In 2003, RIAC made a decision to transition from sound insulation to land acquisition of more severely impacted homes. In 2002, RIAC accepted another grant from the FAA, which began the Voluntary Land Acquisition Program (VLAP), another approved element of the Part 150 Program. As of this date, 397 homes have been purchased under this program. With the completion of the EIS/ROD, and the air-side improvement program about to be underway, the sound insulation program is slated to resume in 2013.

For further information on FAA’s announcement, contact Richard Doucette, Environmental Program Manager in FAA’s New England Region Office; tel: (781) 238-7613; e-mail: Richard.doucette@faa.gov.

Stage 2, from p. 86

ciation (NBAA).

“Dialogue has been underway for many years to determine a date for a Stage 2 phase-out for NBAA members and to make the timeline and procedure for that phase-out as workable for those companies as possible,” said NBAA Chief Operating Officer Steve Brown.

“As those discussions have taken place, NBAA has continuously reminded agency officials and congressional lawmakers about the need for companies to have sufficient accommodation for significantly modifying or replacing a major asset like a business airplane to meet Stage 2 phase-out requirements,” Brown added.

“Government leaders have taken our concerns into account and have therefore refrained from finalizing a Stage 2 restriction on business aircraft for more than two decades after enacting legislation calling for such restrictions on airliners and other large aircraft.”

The Airport Noise and Capacity Act (ANCA), enacted in 1990, directed the FAA to phase out the operation of Stage 2 aircraft over 75,000 lb. by Dec. 31, 1999. NBAA was instrumental in getting an exemption from that phase out for jets weighing less than 75,000 lb.

‘Victory at Last’

The effort to eliminate the exemption for Stage 2 business jets in ANCA was championed by a coalition of 20 airport managers and neighbors at some of the nation’s busiest corporate airports where the older aircraft accounted for an inordinate number of noise complaints.

They formed a group called ‘Sound Initiative: A Coalition for Quieter Skies,’ which has worked since 2004 to get Congress to bar operations of Stage 1 and 2 jets under 75,000 lbs.

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“Victory at last!” the coalition declared after Congress passed the FAA Modernization Act.

In its *Federal Register* notice announcing the final rule, FAA said that, of the 599 Stage 2 planes under 75,000 lb. affected by the ban, some 382 cannot be made Stage 3 compliant because there are no Stage 3 hushkits for them.

Of the 17 aircraft models affected by the ban, Stage 3 hushkits are currently only available for Stage 2 Gulfstream II and II aircraft, FAA said.

However, GA Aviation submitted a letter to the docket on the final rule noting that modification kits are now available for two other types of aircraft affected by the ban.

A company called Noise Reduction Engineering in Ypsanti, MI, has developed a hushkit for Dassault’s Falcon DA20 fitted with GE CF700 engines.

And FAA is expected by September to approve a new Supplemental Type Certificate being developed by Butler National Corp. out of Kansas for Learjet series 23/24/25 aircraft fitted with GE CJ610 engines.

FAA will accept public comments on the final rule until Sept. 3. Comment can be submitted at www.regulations.gov by referencing Docket No. FAA-2013-0503.

In Brief...

Midway, Hilo Noise Maps Approved

On May 20, the FAA announced its determination that noise exposure maps submitted by the City of Chicago Department of Aviation for Chicago Midway International Airport meet federal requirements.

The agency also said it will complete its review of a proposed Part 150 airport noise compatibility for the airport by Nov. 18.

On July 9, FAA announced its determination that noise exposure maps submitted by the Hawaii State Department of Transportation for Hilo International Airport meet federal requirements.

First AIP Noise Grant in FY 2013 Announced

Almost 10 months into fiscal year 2013, the FAA finally announced an Airport Improvement Program (AIP) grant for airport noise mitigation. However, it is the only AIP noise mitigation grant announced to date in fiscal 2013.

Westover Air Reserve Base/Metropolitan Airport in the communities of Chicopee and Ludlow, MA, received a grant of \$153,614 to conduct a noise compatibility plan study.

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Anne H. Kohut, Publisher

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