

# **AIRPORT NOISE AND CAPACITY ACT OF 1990**

## **P. 479 AIRPORT NOISE AND CAPACITY ACT OF 1990**

**SEC. 9301. SHORT TITLE** This subtitle may be cited as the “Airport Noise and /Capacity Act of 1990.”

[49 U.S.C. App. 2151 note]

## **SEC. 9302. FINDINGS.**

The Congress finds that- (1) aviation noise management is crucial to the continued increase in airport capacity; (2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation which could impede the national air transportation systems; (3) a noise policy must be implemented at the national level; (4) local interest in aviation noise management shall be considered in determining the national interest; (5) community concerns can be alleviated through the use of new technology aircraft, combined with the use of revenues, including those available from passenger facility charges for noise management; (6) federally controlled revenues can help resolve noise problems and carry with them a responsibility to the national airport system; (7) revenues derived from a passenger facility charge may be applied to noise management and increased airport capacity; and (8) a precondition to the establishment and collection of passenger facility charges is the issuance by the Secretary of Transportation of a final rule establishing procedures for reviewing airport noise and access restrictions on operations of Stage 2 and stage 3 aircraft.

[49 U.S.C. App 2151]

## **SEC. 9303. NATIONAL AVIATION NOISE POLICY.**

(a) **DEVELOPMENT** - Not later than July 1, 1991, the Secretary of Transportation (hereafter in this subtitle referred to as the “Secretary”) shall issue regulations establishing a national aviation noise policy which takes into account the findings, determinations, and provisions of this subtitle, including the phaseout and nonaddition of Stage 2 aircraft as provided in this subtitle an implementation dates and reporting requirements consistent wit this subtitle and existing law.

(b) **BASIS** - The national aviation noise policy shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on competition in the airline industry, including the ability of air carriers to achieve

capacity growth consistent with the projected rate of growth for the airline industry, the impact of competition within the airline and aircargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry.

Page 480

(c) **RECOMMENDATIONS** - Not later than July 1, 1991, the Secretary shall transmit to Congress recommendations on- (1) the need for changes in the standards and procedures which govern the rights of State and local governments (including airport authorities) to restrict aircraft operations for the purpose of limiting aircraft noise; (2) the need for changes in the standards and procedures which govern law suits by persons adversely affected by aircraft noise; (3) the need for changes in standards and procedures for Federal regulation of airspace (including the pattern of operations for the air traffic control system) in order to take better account of environmental effects; (4) the need for changes in the Federal program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land impacted by aircraft noise; (5) whether any changes in policy recommended in paragraphs (1) through (4) should be accomplished through regulatory, administrative, or legislative action; and (6) specific legislative proposals necessary for implementing the national aviation noise policy.

[49 U.S.C. App 2152]

#### **SEC. 9304. NOISE AND ACCESS RESTRICTION REVIEWS.**

##### **(a) IN GENERAL-**

(1) **ESTABLISHMENT OF PROGRAM** - The national aviation noise policy to be established under this subtitle, shall require the establishment, by regulation, in accordance with the provisions of this section of a national program for reviewing airport noise and access restrictions on operations of Stage 2 and Stage 3 aircraft. Such program shall provide for adequate public notice and comment opportunities on such restrictions.

##### **(2) LIMITATIONS ON APPLICABILITY.-**

(A) **APPLICABILITY DATE FOR STAGE 2 AIRCRAFT.** - With respect to Stage 2 aircraft, the requirements set forth in subsection (c) shall apply only to restrictions proposed after October 1, 1990.

(B) **APPLICABILITY DATE FOR STAGE 3 AIRCRAFT.** - With respect to Stage 3 aircraft, the requirements set forth in subsections (b) and (d) shall apply only to restrictions that first become effective after October 1, 1990.

**(C) SPECIFIC EXEMPTIONS. - Subsections (b), (c), and (d) shall not apply to- (i) a local action to enforce a negotiated or executed airport aircraft noise or access agreement between the airport operator and the aircraft operator in effect on the date of the enactment of this Act; (ii) a local action to enforce a negotiated or executed airport aircraft noise or access restriction the airport operator and the aircraft operators agreed to before the of the enactment of this Act; (iii) an intergovernmental agreement including airport aircraft noise or access restriction in effect on the date of the enactment of this Act; (iv) a subsequent amendment to an airport aircraft noise or access agreement or restriction in effect on the date of the enactment of this Act that does not reduce or limit aircraft operations or affect aircraft safety; (v) (I) a restriction which was adopted by an airport operator on or before October 1, 1990, and which was stayed as of October 1, 1990 by a court order or as a result of litigation, if such restriction or a part thereof is subsequently allowed by a court to take effect; and (II) in any case in which a restriction described in subclause (I) is either partially or totally disallowed by a court, any new restriction imposed by an airport operator to replace such disallowed restriction if such new restriction would not prohibit aircraft operations in effect as of the date of the enactment of this Act; and (III) in any case in which a restriction described in subclause (I) is either partially or totally disallowed by a court, and any new restriction imposed by an airport operator to replace such disallowed restriction if such new restriction would not prohibit aircraft operations in effect as of the date of the enactment of this Act; and (vi) a local action which represents the adoption of the final portion of a program of a staged airport aircraft noise or access restriction where the initial portion of such program was adopted during calendar year 1988 and was in effect on the date of the enactment of this Act.**

**(D) ADDITIONAL WORKING GROUP EXEMPTIONS. -**

**Subsections (b) and (d) shall not apply where the Federal Aviation Administration has prior to the date of the enactment of this Act formed a working group (outside the process established by part 150 of title 14 of the Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes, unless an agreement relating to noise reductions at such airport is entered into between the airport proprietor and an airline or airlines constituting a majority of the airline use of such airport, in which case the exception to subsections (b) and (d) provided by this sentence shall apply only to local actions to enforce such agreement.**

**(b) LIMITATION ON STAGE 3 AIRCRAFT RESTRICTIONS. - No airport noise or access restriction on the operation of a Stage 3 aircraft, including but not limited to-: (1) a restriction as to noise levels generated on either a single event or cumulative basis; (2) a limit, direct or indirect, on the total number of Stage 3 aircraft operations; (3) a noise budget or noise allocation program which would include Stage 3 aircraft;'**

a restriction imposing limits on hours of operations; and (5) any other limit on Stage 3 aircraft; shall be effective unless it has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary pursuant to an airport or aircraft operator's request for approval in accordance with the program established pursuant to this section

**(c) LIMITATION ON STAGE 2 AIRCRAFT RESTRICTIONS.-** No airport noise or Stage 2 aircraft unless the airport operator publishes the proposed noise or access restriction and prepares and makes available for public comment at least 180 days before the effective date of the restriction- (1) an analysis of the anticipated or actual costs and benefits of the existing or proposed noise or access restrictions; (2) a description of alternative restrictions; and (3) a description of the alternative measures considered which do not involve aircraft retractions, and a comparison of the costs and benefits of such alternative measures to the costs and benefits of the proposed noise or access restriction.

**(d) APPROVAL OF STAGE 3 AIRCRAFT RESTRICTIONS.-**

**(1) IN GENERAL.-** Not later than the 180th day after the date on which the Secretary receives an airport or aircraft operator's request for approval of a noise or access restriction on the operation of a Stage 3 aircraft, the Secretary shall approve or disapprove such request.

**(2) REQUIRED FINDINGS.-** The Secretary shall not approve a noise or access restriction applying to Stage 3 aircraft operations unless the Secretary finds the following conditions to be supported by substantial evidence: (A) The proposed restriction is reasonable, nonarbitrary, and nondiscriminatory. (B) The proposed restriction does not create an undue burden on interstate or foreign commerce. (C) The proposed restriction is not inconsistent with maintaining the safe and efficient utilization of the navigable airspace. (D) The proposed restriction does not conflict with any existing Federal statute or regulation. (E) There has been an adequate opportunity for public comment with respect to the restriction. (F) The proposed restriction does not create an undue burden on the national aviation system.

**(e) INELIGIBILITY FOR PFC's AND AIP FUNDS.-** Sponsors of facilities operating under airport aircraft noise or access restrictions on Stage 3 aircraft operations that first became effective after October 1, 1990, shall not be eligible for grants authorized by section 505 of the Airport and Airway Improvement Act of 1982 after the 90th day following the date on which the Secretary issues a final rule under section 9304(a) of this Act, unless such restriction have been agreed to by the airport proprietor and aircraft operators or the Secretary has approved the restrictions under this subtitle or the restrictions have been rescinded.

**(f) REEVALUATION.-** The Secretary may reevaluate any noise restrictions previously agreed to or approved under subsection (d) upon the request of any aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport and that a review and reevaluation pursuant to the criteria established under subsection (d) of the previously approved or agreed to noise restriction is therefore justified.

**(g) PROCEDURES FOR REEVALUATION.-** The Secretary shall establish by regulation procedures under which reevaluations under subsection (f?) are to be accomplished. A reevaluation under subsection (f) of a restriction shall not occur less than 2 years after a determination under subsection (d) has been made with respect to such restriction.

**(h) EFFECT ON EXISTING LAW.-** Except to the extent required by the application of the provisions of this section, nothing in this subtitle shall be deemed to eliminate, invalidate, or supersede- (1) existing law with respect to airport noise or access restrictions by local authorities; (2) any proposed airport noise or access regulation at a general aviation airport where the airport proprietor has formally initiated a regulatory or legislative process on or before October 1, 1990; and (3) the authority of the Secretary to seek and obtain such legal remedies as the Secretary considers appropriate, including injunctive relief.

[49 U.S.C. App. 2153]

#### **SEC. 9305. DETERMINATION REGARDING NOISE RESTRICTIONS ON CERTAIN STAGE 2 AIRCRAFT.**

The Secretary shall determine by a study the applicability of subsections (a), (b), (c), and (d) of section 9304 to noise restrictions on the operations of Stage 2 aircraft weighing less than 75,000 pounds. In making such determination, the Secretary shall consider- (1) noise levels produced by such aircraft relative to other aircraft; (2) the benefits to general aviation and the need for efficiency in the national air transportation system; (3) the differences in the nature of operations at airports and the areas immediately surrounding such airports; (4) international standards and accords with respect to aircraft noise; and (5) such other factors which the Secretary deems necessary.

[49 U.S.C. App. 2154]

#### **SEC. 9306. FEDERAL LIABILITY FOR NOISE DAMAGES.**

In the event that a proposed airport aircraft noise or access restriction is disapproved, the Federal Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of such disapproval. Action for the resolution of such a case shall be brought solely in the United States Claims court.

**SEC. 9307. LIMITATION ON AIRPORT IMPROVEMENT PROGRAM REVENUE.**

Under no conditions shall any airport receive revenue under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 unless the Secretary assures that the airport is not imposing any noise or access restriction not in compliance with this subtitle:

[49 U.S.C. App. 2156]

**SEC. 9308. PROHIBITION ON OPERATION OF CERTAIN AIRCRAFT NOT COMPLYING WITH STAGE 3 NOISE LEVELS.**

(a) **GENERAL RULE.-** After December 31, 1999, no person may operate to or from an airport in the United States any civil subsonic turbojet aircraft, with a maximum weight of more than 75,000 pounds unless such aircraft complies with the Stage 3 noise levels, as determined by the Secretary.

(b) **WAIVER.-**

(1) **APPLICATION.-** If, by July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the stage 3 noise levels, such carrier may apply for a waiver of the prohibition set forth in subsection (a) for the remaining 15 or less percent of the aircraft used by the carrier to provide air transportation. Such application must be filed with the Secretary no later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the air carrier to provide air transportation to comply with such noise levels not later than December 31, 2003.

(2) **GRANTING OF WAIVER.-** The Secretary may grant a waiver under this subsection if the Secretary finds that granting such waiver is in the public interest. In making such a finding, the Secretary shall consider the effect of granting such waiver on competition in air carrier industry and on small community air service.

(3) **LIMITATION.-** A waiver granted under this subsection may not permit the operation of Stage 2 aircraft in the United States after December 31, 2003.

(c) **COMPLIANCE SCHEDULE.-** The Secretary shall, by regulation, establish a schedule for phased-in compliance with the prohibition set forth in subsection (a). The period of such phase-in shall begin on the date of the enactment of this Act and end before December 31, 1999. Such regulations shall establish interim compliance dates. Such schedule for phased-in compliance shall be based upon a detailed economic analysis of the impact of the phaseout date for Stage 2 aircraft on

competition in the airline industry, including the ability of air carriers to achieve capacity growth, consistent with the projected rates of growth for the airline and air cargo industries, the impact on nonhub and small community air service, and the impact on new entry into the airline industry, and on analysis of the impact of aircraft noise on persons residing near airports.

Page 485

**(d) EXEMPTION FOR NONCONTIGUOUS AIR SERVICE.-** This section and section 9309 shall not apply to aircraft which are used solely to provide air transportation outside the 48 contiguous States. Any civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into noncontiguous State or a territory or possession of the United States on or after the date of the enactment of this Act may not be used to provide air transportation in the 48 contiguous States unless such aircraft complies with the stage 3 noise levels.

**(e) VIOLATIONS.-** Violations of this section and section 9309 and regulations issued to carry out such sections shall be subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958 for violations of title VI.

**(f) JUDICIAL REVIEW.-** Actions taken by the Secretary under this section and section 9309 shall be subject to judicial review in accordance with section 1006 of the Federal Aviation Act of 1958.

**(g) REPORTS.-** Beginning with calendar year 1992, each air carrier shall submit to the Secretary an annual report on the progress such carrier is making toward complying with the requirements of this section (including the regulations issued to carry out this section), and the Secretary shall transmit to Congress an annual report on the progress being made toward such compliance.

**(h) DEFINITIONS.-** As used in this section, the following definitions apply:

**(1) AIR CARRIER; AIR TRANSPORTATION; UNITED STATES.-** The terms “air carrier,” “air transportation,” and “United States” have the meanings such terms have under section 101 of the Federal Aviation Act of 1958.

**(2) STAGE 3 NOISE LEVELS.-** The term “Stage 3 noise levels” means the Stage 3 noise levels set forth in part 36 of title 14, Code of Federal Regulations, as in effect on the date of the enactment of this Act.

[49 U.S.C. App. 2157]

**SEC. 9309. NONADDITION RULE.**

**(a) GENERAL RULE.-** Except as provided in subsection (b) of this section, no person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds which is imported into the United States on or after the date of the enactment of this Act unless- (1) it complies with the Stage 3 noise levels, or (2) it was purchased by the person who imports the aircraft into the United States under a legally binding contract entered into before such date of enactment.

**(b) EXEMPTION FOR COMPLYING MODIFICATIONS.-** The Secretary may provide an exemption from the requirements of subsection (a) to permit a person to obtain modifications to an aircraft to meet the stage 3 noise levels.

**(c) LIMITATION ON STATUTORY CONSTRUCTION.-** For the purpose of this section, an aircraft shall not be considered to have been imported into the United States if such aircraft- (1) on the date of enactment of this Act, is owned- Page 486 (A) by a corporation, trust, or partnership which is organized under the laws of the United States or any State (including the District of Columbia); (B) by an individual who is a citizen of the United States; or (C) by any entity which is owned or controlled by a corporation, trust, partnership, or individual described in this paragraph; and (2) enters into the United States not later than 6 months after the date of the expiration of a lease agreement (including any extension thereof) between an owner described in paragraph (1) and a foreign carrier.

[49 U.S.C. App. 2158]