



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

May 15, 1992

Mr. David Feldheim
Assistant City Attorney
P.O. Drawer 14250
Fort Lauderdale, FL 33302

Dear Mr. Feldheim:

This is in response to your letter of April 6, 1992, requesting information on FAR Part 161 relative to the City of Fort Lauderdale's contemplated ordinance to restrict certain aircraft operations at Fort Lauderdale Executive Airport for the purposes of noise reduction. We have addressed our remarks to the specific issues you raised regarding Part 161 and your proposed ordinance.

Your first concern, how to properly express within the ordinance its intended effect of restricting only Stage 2 aircraft, is clearly warranted. Since the focus of the ordinance would be the reduction of aircraft noise in your community, basing it on a maximum decibel level at the airport rather than on characterizations of aircraft as Stage 2 or Stage 3 would serve this purpose. However, since some Stage 3 aircraft actually emit more sound energy than some Stage 2 aircraft because of weight factors considered in the noise certification process, a caveat in a decibel level based ordinance to exempt Stage 3, regardless of maximum decibel level cited, raises the issue of unjust discrimination. Concerns on the part of aircraft operators that the ordinance was based on non-noise criteria and discriminates against some Stage 2 airplanes, by allowing operation of certain noisier Stage 3 airplanes, could be anticipated. If legal recourse were sought, the ordinance may be overturned as unjustly discriminatory.

If your intent is to draft a decibel-level ordinance not subject to 14 CFR Part 161, Subpart D, then you must select a decibel level high enough that no Stage 3 aircraft capable of operating at the airport would be affected. Advisory Circular 36-3F, Estimated Airplane Noise Levels in A-weighted Decibels, and Advisory Circular 36-1D, Noise Levels for U.S. Certificated and Foreign Aircraft (enclosed), provide an assured means of identifying such a decibel level. If your ordinance should propose a decibel-level that would affect operations by both Stage 2 and Stage 3 aircraft, then it must be implemented in accordance with 14 CFR Part 161, Subparts C and D. Subpart D requires thorough economic analysis and Federal Aviation Administration (FAA) approval of restrictions on Stage 3 operations. Alternatives would be an ordinance, or preferably a voluntary agreement, which restricts

only Stage 2 aircraft. Most lighter than transport category, non-turbojet, general aviation aircraft are not classified as either Stage 1, 2, or 3 and would be exempted, while the Stage 2 turbojet would be restricted. This would still require full compliance with Subpart C of Part 161, including full economic analysis of your restriction.

Your other concern, whether Subpart C requires adoption of an ordinance to await expiration of the 180-day period, is one of statutory and regulatory interpretation. Section 9304(c) requires an airport operator to publish a "proposed noise or access restriction," and prepare and make economic analysis and certain other information "available for public comment at least 180 days before the effective date of the restriction." Because Section 9304 (c) uses the term "proposed" restriction and contemplates that the "proposed restriction be made available for comment before the restriction takes effect. The Act clearly contemplates that the restriction remains as proposed for 180 days of meaningful comment. The ordinance is not "proposed" in the truest sense of the word if it has already been adopted by the governing body. We read "availability for comment" in the Act to require the airport operator to afford the airport community and aircraft operators meaningful opportunities for comment. Meaningful opportunities to comment are clearly undermined if delayed until after the legislative process is completed and the ordinance is adopted.

Therefore, the Act and Section 161.203 of Part 161 intend that airport operators await the end of the 180-day period to adapt and implement ordinances proposed in accordance with the Airport Noise and Capacity Act (ANCA).

Fort Lauderdale's evident desire to properly comply with the provisions of ANCA, as implemented by FAA regulations, is greatly appreciated. We look forward to working with you on this matter.

Sincerely,

Louise E. Maillett
Director
Office of Environment and Energy