

THE LAW OF NOISE REGULATION

PRESENTED TO THE 24TH ANNUAL
UNIV. OF CALIFORNIA SYMPOSIUM ON
AVIATION NOISE AND AIR QUALITY

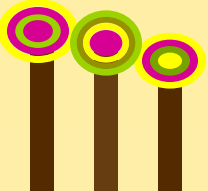
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Today's Presentation



- 1) Basic concepts
- 2) Division of responsibility
- 3) Key statutes and regulations
- 4) Final Exam
- 5) Hot topics



High Altitude Overview



- ★ Unique law and policy
- ★ Evolved over time
- ★ Balance among competing concerns
- ★ Multiple, overlapping standards
- ★ Highly technical
- ★ FAA receives considerable deference
- ★ Focus on intent, not results



High Altitude Overview



★ Acronym-rich environment

★ DNL = Day/Night Level

★ dB = Decibel

★ FAR = Federal Aviation Regulations

★ AIP = Airport Improvement Program

★ PFC = Passenger Facility Charge

★ ANCA = Airport Noise and Capacity Act of 1990

★ ASNA = Aviation Safety and Noise Abatement Act of 1979

★ NEPA = National Environmental Policy Act

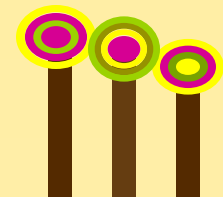
Division of Responsibility



- ★ Federal Aviation Administration
 - ★ Delegated power; conferred by Congress
 - ★ Technical expertise
- ★ State and local governments
 - ★ Reserved power over land use
 - ★ Limited state role over noise
- ★ Airport proprietor/sponsor
 - ★ Proprietary and police power
 - ★ Authority under ANCA

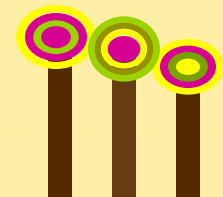


- ★ Authority to control flight of aircraft
 - ★ Shared with pilot in command
- ★ Delegated responsibility to control noise
 - ★ Noise source control; stage certification
 - ★ USEPA has no regulatory authority
- ★ Exclusive authority to certify aircraft and pilots
- ★ Authority to allocate funds under the AIP and to authorize collection and use of PFCs



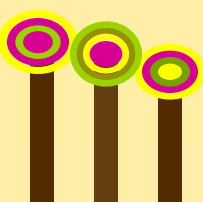


- ★ 1968 – Congress required FAA to control noise
- ★ FAA Regulation
 - ★ FAR Part 36
 - ★ FAR Part 91
 - ★ Companion Advisory Circulars
- ★ Incremental approach to regulation
 - ★ New aircraft types
 - ★ New aircraft construction
 - ★ Existing fleet





- ★ Stage 1, Stage 2, Stage 3, Stage 4
- ★ Weight and number of engines are factors; results in overlap at the edges
- ★ Current status
 - ★ All aircraft weighing more than 75,000 pounds are Stage 3 or better
 - ★ Approximately 1,400 registered non-Stage 3
- ★ Stage 4
 - ★ New aircraft type certifications after January 2006
 - ★ Can be met by existing fleet



ASNA and Part 150



- ★ Voluntary program
- ★ Not all airports participate
- ★ Two primary elements
 - ★ Noise Exposure Map
 - ★ Noise Compatibility Program
- ★ Financial implications
 - ★ Study is eligible for funding
 - ★ Approved projects are eligible for funding
- ★ Some liability protection

ASNA and Part 150



★ FAA standards

- ★ dBA – A-weighted sound level

- ★ DNL – Day-Night Sound Level

 - ★ Cumulative noise exposure

 - ★ Nighttime noise penalty

- ★ DNL 65 dB

 - ★ FAA considers most land uses below this level to be compatible

 - ★ Some land uses are not addressed by guidelines (e.g., national parks)

 - ★ Highly controversial

ASNA and Part 150



- ★ Operational measures

- ★ Recommended procedures and mandatory restrictions

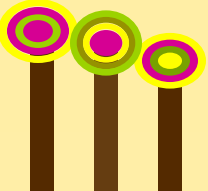
- ★ Land use measures

- ★ Land acquisition, aviation easements, sound insulation, restrictive zoning

- ★ Implementation measures

- ★ Education, noise office, complaint hotline

- ★ *Recommendations* to local governments



ANCA and Part 161



★ Three main parts

- ★ Banned Stage 2 aircraft over 75,000 pounds after January 2000

- ★ Prohibited Stage 3 restrictions without FAA approval

- ★ Established procedures for Stage 2 restrictions

- ★ Any restriction that *affects* Stage 2 or Stage 3 aircraft is subject to ANCA

- ★ Leases, regulations

- ★ FAA regulations at FAR Part 161

ANCA and Part 161



- ★ ANCA does not apply to the following:
 - ★ FAA-imposed procedures
 - ★ Voluntary measures
 - ★ Restrictions on Stage 1 and non-stage rated aircraft
 - ★ Weight-based restrictions
 - ★ Grandfathered noise rules
 - ★ Amendment to pre-ANCA noise rule that does not further restrict aircraft

ANCA and Part 161



★ Stage 2

- ★ No federal approval required
- ★ Requires study, public comment and 6-month waiting period
- ★ One airport has adopted a Stage 2 restriction under ANCA and Part 161 (Naples, Florida)
- ★ *Naples v. FAA* (D.C. Cir. 2005)
 - ★ Grant assurances apply
 - ★ Consideration of benefits below DNL 65 dB

RNCRA and Part 161



- ★ Stage 3
 - ★ FAA approval required
 - ★ Process: study, public comment, FAA review
 - ★ FAA Review
 - ★ Six conditions for approval
 - ★ Airport may offer alternative
 - ★ Three studies underway
 - ★ Burbank – Recently submitted application
 - ★ Van Nuys – Pursuing grandfathered restriction
 - ★ Los Angeles – Conducting study
 - ★ Costly and complex



- ★ Federal actions (including funding) with potentially significant environmental impact
- ★ Review includes evaluation of noise impacts
- ★ DNL 65 dB is FAA's threshold of significance
 - ★ 1.5 dB increase within DNL 65 dB contour
 - ★ 3 dB increase between DNL 60 and 65 dB
- ★ Noise control may be element of mitigation
 - ★ FAA may condition approval in ROD on mitigation



★ Order 1050.1E

- ★ Updated and expanded list of categorical exclusions; includes Part 161 studies that reduce noise
- ★ Additional guidance on *supplemental* noise metrics
- ★ Special treatment for parks and other noise-sensitive areas

★ Order 5050.4B

- ★ Nuts and bolts of environmental review
- ★ Confirms DNL 65 dB as threshold of significance

★ Desk Reference

Role of Local Government



- ★ Authority to regulate land use in areas surrounding airport
- ★ Authority to adopt zoning and other land use controls on airport siting and expansion
- ★ Limited authority to impose land use and building controls on airport and to regulate capital projects

Role of Local Government



- ★ Local governments that are not the airport proprietor cannot restrict the operation of aircraft
- ★ Extended by one court to prohibit zoning to limit runways and taxiways
- ★ Recently extended to prohibit zoning of runway safety area project
- ★ No local government regulation of “routes, rates or service”

Role of Airport Proprietor



- ★ Limits on local government do not apply to proprietor
 - ★ Known as the “Proprietor Exception”
- ★ Basis for the exception
 - ★ Needed to address noise-related liability
 - ★ Inherent in status as proprietor
- ★ Significantly altered by ANCA
- ★ Not limited to noise
- ★ Can never control movement of aircraft

Role of Airport Proprietor



★ Types of Actions

- ★ Noise-based restrictions

- ★ Safety-based restrictions

- ★ Other actions with effect on noise

 - ★ Physical improvements

 - ★ Regulation of businesses

★ Leads to differences in:

- ★ Process

- ★ Standards

- ★ Penalties



Final Exam



- 1) Who controls aircraft noise at its source?
 - a) EPA
 - b) FAA
 - c) State
 - d) Airport sponsor

- 2) What is the role of local government?
 - a) Review and comment
 - b) Control over surrounding land use
 - c) Political influence
 - d) All of the above

Final Exam

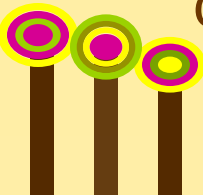


3) When *must* airport sponsors study noise?

- a) Environmental review under NEPA
- b) Part 150 studies
- c) Part 161 studies
- d) Never

4) What is ANCA?

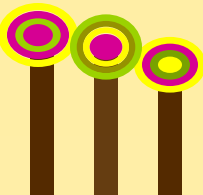
- a) Aviation's Not Clean Act
- b) Alaska Native Claims Act
- c) Airport Noise and Capacity Act
- d) Air Noise and Compatibility Act



Final Exam



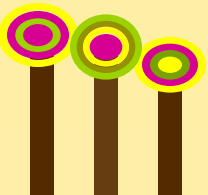
- 5) What is the legal significance of DNL 65 db?
- a) Federal threshold for land use compatibility
 - b) Threshold for approval and funding under Part 150
 - c) Threshold of significance for urban areas in environmental review under NEPA
 - d) All of the above
 - e) a) and c) above



Final Exam



- 6) What is the legal basis for an airport sponsor to regulate noise?
- a) ANCA
 - b) Statutory exception
 - c) Noise-related liability
 - d) Inherent authority
 - e) All of the above
 - f) No one knows!



Hot Topics



- ★ Recession
- ★ Reauthorization
- ★ Revised Advisory Circular
- ★ NextGen
- ★ Safety-based restrictions
- ★ Noise land





Questions?

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