Today’s Presentation

Division of responsibility

Federal responsibility
  - Noise source control

Local responsibility
  - Land use compatibility
  - Aircraft restrictions
  - Environmental review
  - Standards for local noise rules

Legal Significance of DNL 65 dB
Overview

- Not static; continuing evolution of law and policy
- Complicated, even to judges
- Multiple, overlapping requirements and standards on the same subject
- Careful balance between federal and local considerations
- FAA receives considerable deference
- Indirect measures can affect noise
Who Is Responsible for Regulating Noise?

Federal Aviation Administration
- Delegated power; conferred by Congress
- Technical expertise

Airport proprietor/sponsor
- Proprietary and police power
- Authority under ANCA

Local governments
- Reserved power over land use
Federal Aviation Administration

✧ 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
Airport Proprietor

- Authority to adopt certain restrictions on the operation of aircraft to control noise and address other local concerns
- Liable for noise-related damages (takings, nuisance)
- Indirect control over noise
  - Authority over airport improvements
  - Authority to regulate businesses at the airport
Local Government

- Authority to adopt zoning and other land use controls on airport siting/expansion
- Limited authority to impose land use controls over existing airports and to require conditions and mitigation for expansion
- Authority to regulate land use in areas surrounding airport
Intersection #1 – Express Preemption

 throwError Local governments, that are not the airport proprietor, cannot restrict the operation of aircraft

 throwError U.S. Supreme Court – City of Burbank v. Lockheed Air Terminal (1973)

 throwError Extended by one court to prohibit zoning to limit runways and taxiways – Los Angeles v. Burbank-Glendale-Pasadena Airport Authority (1991)

 throwError No local government regulation of “routes, rates or service”
Intersection #2 – Proprietor Exception

*Burbank* footnote – decision does not apply to proprietor
- Congress later codified exception to express preemption

What is the basis for the exception?
- Needed to address noise-related liability
- Inherent in status as proprietor

Not limited to noise
- Other local concerns
- Multi-airport system
Proprietor Exception (cont.)

 Limits on proprietor’s authority

- Restriction must be reasonable, nonarbitrary and not unjustly discriminatory; otherwise preempted
- Cannot restrict the flight of individual aircraft; recommendations only
- Potential new standard – May have to prove exposure to noise-related liability

 Altered significantly by ANCA; at least for Stage 3 restrictions
Federal Noise Source Control

1968 – Congress required FAA to control noise

FAA Regulation
- FAR Part 36
- FAR Part 91
- Companion Advisory Circulars

Increasingly stringent controls
- New aircraft types
- New aircraft construction
- Existing fleet
Stage Certification

-Cola Stage 1, Stage 2, Stage 3

-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
  - 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 to promote land use compatibility

Two primary elements
- Noise Exposure Map
- Noise Compatibility Program

Funding is key
- 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 all land uses below this level to be compatible
  - NEW LAW – FAA will not approve or fund measures to address noise below DNL 65 dB
Noise Compatibility Program

ۥ Operational measures
  ▪ Recommended procedures and mandatory restrictions

ۥ Land use measures
  ▪ Land acquisition, avigation easements, sound insulation, restrictive zoning

ۥ Implementation measures
  ▪ Education, noise office, complaint hotline

ۥ Recommendations to local governments
Airport Noise and Capacity Act of 1990

Three primary elements

- Banned Stage 2 aircraft over 75,000 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
  - Amendment to pre-ANCA noise rule that does not further restrict aircraft
  - Grandfathered noise rules
Stage 2 Restrictions

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- No federal approval required
- Stage 2 restrictions can be adopted locally after study, public comment and 6-month waiting period
- Study is demanding; FAA is “keeper of the process”
- Only one airport (APF) has adopted a Stage 2 restriction under ANCA and Part 161 (Naples, Florida)
Stage 3 Restrictions

- FAA approval required

- Process: study, public comment, FAA review

- FAA Review
  - Six conditions for approval
  - Airport may offer alternative

- One study underway (Burbank, California)

- Costly, cumbersome and challenging
NEPA – Environmental Review

- Federal actions (including funding) with potentially significant environmental impact
- Review includes evaluation of noise impacts
- Noise control may be element of mitigation
  - Federal or local
  - FAA may approve through Record of Decision
- DNL 65 dB is FAA’s threshold of significance
  - 1.5 dB increase in DNL within 65 dB DNL
  - 3 dB increase in DNL between 60 and 65 dB DNL
FAA NEPA Guidance

❖ Order 1050.1E
  - Updated and expanded list of categorical exclusions; includes Part 161 studies
  - Additional guidance on supplemental noise metrics
  - Special treatment for parks and other noise-sensitive areas

❖ Order 5050.4B (Draft)
  - Nuts and bolts of environmental review
  - Draft reaffirms DNL 65 dB as threshold of significance
  - Comment period closed (2/16/05)
Local Noise Rules

✦ How imposed
  - Stage 2 or 3 – Part 161
  - All Other – Part 150, EIS or other study

✦ Requirements and Standards
  - Stage 3 – ANCA and Part 161
  - Stage 2 – ANCA/Part 161, Constitution, Grant Assurances(?)
  - All Others – No formal process; Constitution, Grant Assurances
Standards and Enforcement

leftJoin Grant Assurances

- Reasonableness, economic nondiscrimination, exclusive rights
- Enforced through FAR Part 16
- Grant eligibility is at stake

leftJoin Surplus Property Act Deeds

- Same standards as grant assurances
- Also enforced through Part 16
- Reversion to federal government is ultimate remedy
Standards and Enforcement (cont.)

𫛭 U.S. Constitution

- Preemption, Equal Protection, “dormant” Commerce Clause
- Preemption standard – reasonable, nonarbitrary and not unjustly discriminatory
- State constitutional standards also apply

𫛭 ANCA

- Cannot adopt restrictions on Stage 2 or 3 without complying with ANCA and Part 161
- Penalty is loss of eligibility for AIP and PFC
Legal Significance of DNL 65 dB

† Land use compatibility
  ▪ Threshold of compatibility for FAA
  ▪ Local governments not bound
  ▪ No funding below

† ANCA and Part 161
  ▪ Study can consider areas outside
  ▪ May affect reasonableness of Stage 2 restriction

† Environmental review
  ▪ Threshold of significance for FAA
Questions

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