RECENT DEVELOPMENTS IN FEDERAL AIRPORT LAW

October 18, 2004

Peter J. Kirsch

KAPLAN KIRSCH ROCKWELL
TODAY’S PRESENTATION: Recent Legal Developments

1. Federal Law: Vision 100; Lott amendment
2. FAA Regulatory and Policy Initiatives: Order 1050.1E; Stage 4; Part 139; PFC approvals; Weight policy; TSA guidelines
3. Forthcoming Issues: Airport incentives; Stage 2 legislation
Vision 100: Century of Aviation Reauthorization Act

- Increased AIP funding ($14.2 billion); local match reduced to 5% through FY07
- Funding for fuel farms, hangars at non-primary airports
- Capacity enhancement at congested airports; safety and security projects
- FAA may commit to air traffic procedures
- Sec. 228: Judicial review in U.S. Court of Appeals
Vision 100: Other Key Provisions

- Sec. 825: Jackson Hole stage 2 ban
- Sec. 160: Land use compatibility by state and local governments (Part 150); regulations issued 9/24
- Sec. 185: Notice before closing airports
- Sec. 189: No Part 150 approval for noise mitigation below DNL 65 dB through FY07 (Lott Amendment)
• Congressionally mandated update
• Streamline environmental review
  ➡ Updated and expanded list of categorical exclusions – remember these!
• Additional guidance on air quality
• Guidance on use of supplemental noise metrics
  ➡ New “documented categorical exclusion”
Stage 4 Noise Levels

• Regulations proposed Dec. 1, 2003
• Applies to all new aircraft type certifications; would *not* affect any currently certificated aircraft
• Follows ICAO Chapter 4 standard that US sought (Boeing vs. Airbus!)
• Minimal burden; minimal benefit
Part 139, Airport Operating Certificates

• Finally (8 years in process!)
• Distinction – over 9 instead of over 30 seats
• Requires certificate for airports with scheduled service using small aircraft (10-30 seats)
• Four classes of airports depending on type of operations: different requirements based on class
• May compel planning for future facility needs
  ▪ Security, recordkeeping, training; wildlife
• Airport does *not* have to seek certificate
PFC Approvals

- Proposed three-year pilot program
- Comments period closed in August
- Streamline PFC application and approval process for small (non-hub) airports
FAA Weight Policy

- New policy – officially still a draft but effective immediately
- Limits ability to regulate weight of aircraft
- Must have current engineering data to support limits
- Presumption against any restriction; bright-line restrictions likely impermissible
- SMO may be test case
TSA Guidelines for GA Airports

• Issued May 2004
• Intended to be flexible, adaptable to different circumstances
• Not regulatory
• Best practices based upon consultation with industry leaders
• Important first step – who knows what’s next
• TSA Guidelines for flight schools 9/20
Sarasota Petition: Airline Incentive Programs

- Petition by Sarasota-Manatee Airport Auth.
- Direct airline subsidies by airports
- Decision this morning: violation of law
Use Restrictions – Stage 2 Developments

- Naples litigation unresolved
- Burbank Part 161 on life support
- LAX/VNY new Part 161 studies
- Noise Act (Part 161) not a safe harbor
- New restrictions highly discouraged
- New effort by airports for federal legislation
  - Phase out remaining Stage 2s
  - Ban remaining Stage 1s
  - Clarify rules on local Stage 1, 2 restrictions
CONCLUSIONS AND OBSERVATIONS

• Unusually active year – legislation, regulation, policy
• Considerable uncertainty – streamlining, weight policy, Part 139
• Stage 4 will not provide immediate noise relief
• Increased airport-specific legislation
• Because future of Stage 2 restrictions is uncertain, lobbying will become focus
QUESTIONS

Key documents are posted on our website

Email me for copies of other documents

www.airportattorneys.com
pkirsch@kaplankirsch.com