

AIRPORT NOISE LAW

STATUTES AND REGULATIONS

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Revised October 5, 2005

Statutes

FEDERAL

Tip Search and retrieve text of the U.S. Code at [House](#) or [Cornell](#). See the chronological list of acts of Congress related to airport noise control and airport development; [History of U.S. Legislation Concerning Airport Noise](#); and [History of Aircraft Noise Regulation in the U.S. to 1981](#).

- *Aircraft Noise Abatement Act* (1968) (49 U.S.C. 44715). Requires the FAA to establish noise standards through consultation with the EPA, and to apply them in connection with issuance of civil aircraft certificates.
- *Airport and Airway Improvement Act* (1982) (49 U.S.C. 47101 - 47131, which comprises subchapter I, chapter 471, in title 49, Transportation; subtitle VII, Aviation Programs; part B, Airport Development and Noise).
- *Airport Noise and Capacity Act* (1990) (49 U.S.C. 47521 - 47533, which comprises subchapter II "National Aviation Noise Policy", chapter 475, in title 49, Transportation; subtitle VII, Aviation Programs; part B, Airport Development and Noise). ANCA mandates that the U.S. air fleet convert to "stage 3" aircraft by Jan. 1, 2000. It permits citizen suits against the FAA "where there is alleged a failure of [the FAA] to perform any act or duty under section 1431 of Title 49 which is not discretionary...." For an example of such a suit see [Alvarado v. Memphis-Shelby County Airport Authority](#). See the following commentary:

[ANCA's Legislative History.](#)

[Wendell Ford's Edsel -- Or How to Delight the Lobbyists and Enrage the Citizens, 1991 editorial on the passage of ANCA.](#)

[The Consequences of ANCA as Seen in 1990.](#)

FAA Policy Statements on ANCA and Part 161, information on how the FAA understands ANCA.

Aviation Noise Policy and Regulation, a discussion of the consequences of ANCA for attempts to control airport noise, from a 1994 law review article.

Airport Noise, a discussion of ANCA and international legislative efforts to control aircraft noise (from the Trade and Environmental Data Base, May 2, 1996).

- Aviation Safety and Noise Abatement Act (1979) (49 U.S.C. 47501 - 47510, which comprises subchapter I "Noise Abatement", chapter 475, in title 49, Transportation; subtitle VII, Aviation Programs; part B, Airport Development and Noise). Grants authority to the Federal Aviation Administration to issue regulations on "air noise compatibility planning". These regulations are published in 14 Code of Federal Regulations Part 150.
- National Environmental Policy Act (1969) (42 U.S.C. 4321-4345). The first comprehensive federal legislation on environmental policy and programs; created the Environmental Protection Agency. It has been amended repeatedly since 1969 to refine policy and create new programs.
- National Parks Air Tour Management Act (2000), Title VIII of Pub.L. 106-81). This Act was part of HR 2000, a complex bill covering a variety of aviation matters. It creates a plan for limiting and managing commercial air tours over national parks, but gives the FAA, rather than the National Park Service, decisive authority to deal with the problem of noise in national parks created by such aircraft (particularly helicopters). It was a follow-up to the National Parks Overflight Act of 1987.
- National Parks Overflights Act (1987), Public Law 100-91 (16 U.S.C. 1a-1 note (1992)). The Act required a variety of studies of noise in national parks created by overflights, as well as a National Park Service report to the Congress, which was issued in July 1995: Report on the Effects of Aircraft Overflights on the National Parks System. The Act also required the FAA to develop plan for the management of air traffic in the air space above the Grand Canyon in order to substantially restore the natural quiet of the park. The FAA's plan has been the subject of two lawsuits:

Grand Canyon Air Tour Coalition v. FAA (1998)

United States Air Tour Assn. v. FAA (2002)

- Noise Control Act (1972) (42 U.S.C. 4901 - 4918 and 49 U.S.C. 44715). This Act was passed after receiving a report from the newly created Office of Noise Abatement and Control in the Environmental Protection Agency (see Noise Pollution and Abatement Act of 1970). See Legislative History of the Noise Control Act of 1972, Congressional Research Service of the Library of Congress, July 1974. The NCA amended the Federal Aviation Act to specifically involve the EPA in the regulation of airport noise. It states in part:

"Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection."

- Noise Pollution and Abatement Act of 1970. Established the Office of Noise Abatement and Control within the Environmental Protection Agency. This office was defunded in 1981 and has

not been funded since then. See Loss of the U.S. EPA's Office of Noise Abatement and Control and "Dormant Noise Control Act and Options to Abate Noise Pollution", 1991, by Sidney Shapiro, Prof. of Law at the University of Kansas. The "Quiet Communities Act of 2003" (see Bills -- 108th Congress) would restore funding.

CALIFORNIA

Tip Search and retrieve text of California codes at [California Law](#).

- *California Environmental Quality Act* (Public Resources Code 21000 et seq.)
- *Miscellaneous Noise Control* (1995) (Health and Safety Code 118825 - 118830) prohibits take-off and landing of aircraft that produce noise in excess of limits for subsonic jet transport aircraft set in the Code of Federal Regulations, title 14, part 36.
- *Noise Control Act* (1973) (Health and Safety Code 46000 - 46080).
- *State Aeronautics Act* (1953) (Public Utilities Code 21001 et seq.) The purposes of the act are stated in Section 21002. And see section 21652, which grants cities, counties, and airport districts the authority to purchase "avigation" easements. Such easements give airports the right to impose on the burdened property "excessive noise, vibration, discomfort, inconvenience, ... and ... reduction in market value due to the operation of aircraft to and from the airport."

OTHER STATES

- State Aviation Statutes -- a general guide.

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Regulations

FEDERAL

Tip Search and retrieve text of Code of Federal Regulations at [CFR](#). Regulations issued by the Federal Aviation Administration are contained in title 14 of the CFR. FAA regulations are available on the Web at [FAR text](#) or [FAR archive](#). Like all federal agencies the Department of Transportation has established a program of periodic review of its regulations -- see [Department of Transportation Unified Agenda](#) and [FAA Regulatory Review Program](#). FAA Advisory Circulars are advisory only; they are not binding on the public.

- *Federal Aviation Regulations, Overview* ([Title 14, Code of Federal Regulations](#)).
- *Aircraft Altitudes, Minimum* ([Federal Aviation Regulation 91.119](#)).
- *Airport Environmental Handbook* (Federal Aviation Administration, Oct. 8, 1985, Order 5050.4A)

- *Airport Noise Compatibility Planning* (14 CFR Part 150) -- Part 150 implements provisions of the Aviation Safety and Noise Abatement Act of 1979 that authorize federal funds to airports for expansion and development. Part 150 allows airports to apply for federal funding to implement noise mitigation measures including residential soundproofing and acquisition of noise-sensitive land around airports. A Part 150 plan can also include recommendations for development around airports. The rules prescribe the procedures, standards, and methodology for the development, submission, and review of airport noise exposure maps and airport noise compatibility programs required when airports apply for federal funds. For guidance on Part 150 studies as well as the status of FAA programs funded under 14 CFR Part 150, see *Airport Land Use Compatibility Planning* at the FAA website. Also see the following documents:

Summary of Part 150 Program

Court Opinions Citing Part 150

Use of Part 150 Noise Exposure Maps to Limit Recovery of Damages for Airport Noise in Federal Court -- the Aviation Safety and Noise Abatement Act of 1979 imposed certain conditions on the rights of private individuals to sue for relief from noise in *federal* court.

FAA Memo on Applicability of Part 150 to Noise Abatement Below 65 dB (1995)

FAA Policy on Part 150 Approval of Noise Mitigation Measures, 63 Federal Register 16409 (April 3, 1998) -- distinguishes between remedial noise mitigation measures, which the FAA will fund, and preventative measures, which will not be funded.

FAA Policy on Funding of Combined Parts 150 and Part 161 Studies and Analyses, 61 Federal Register 48727 (Sept. 16, 1996).

Part 150, Airport Noise Compatibility Planning -- this FAA website publishes detailed information on applications by airports for noise mitigation studies, funds awarded for mitigation, links to policies, etc.

- *Classroom Acoustics* -- proposed standard on classroom acoustical design. (Response by the Architectural and Transportation Barriers Compliance Board to request for comments, Federal Register, Nov. 8, 1999.)
- *Estimated Airplane Noise Levels in A-Weighted Decibels* (FAA Advisory Circulars 36-3G, April 2, 1996; 36-1G, Aug. 27, 1997) -- Provides noise level data for aircraft certificated under 14 CFR Part 36.
- *Land Acquisition and Relocation Assistance for Airport Improvement Program Projects* (FAA Advisory Circular 150/5100-7)
- *Letters of Agreement* (Sec. 3 of FAA Order 7210.3P) -- An airport can request air traffic control measures to reduce aircraft noise. If the FAA agrees, the FAA and the airport should sign an LOA to document the measures.
- *Noise Abatement Departure Profiles* (FAA Advisory Circular 91-53A)
- *Noise Screening Procedure for Certain Air Traffic Actions above 3000 feet AGL* (FAA, Sep 1990)
- *Noise Standards: Aircraft Type and Airworthiness Certification* (14 CFR Part 36)

Proposed changes in noise certification regulations for helicopters, notice Oct. 5, 2000.

- Notice and Approval of Airport Noise and Access Restrictions (14 CFR Part 161) -- Part 161 applies to (1) restrictions on stage-2 aircraft operations proposed after October 1, 1990; (2) restrictions on stage-3 aircraft operations that became effective after October 1, 1990; and (3) amendments to airport noise and access restrictions in effect on October 1, 1990, but amended after that date, where the amendment reduces or limits aircraft operations or affects aircraft safety.

FAA Policy Statements on ANCA and Part 161, information on how the FAA understands ANCA.

Requirements for Restrictions on Stage-2 Aircraft, a plain-language summary of the requirements in Part 161 for imposing restrictions on stage-2 aircraft. Unlike restrictions on stage-3 aircraft, the FAA does not have authority to approve or disapprove restrictions on stage-2 aircraft.

Aviation Noise Policy and Regulation, a discussion of Part 161 and the statute behind it.

- Policies and Procedures for Considering Environmental Impacts -- FAA Order 1050.1D, December 5, 1986. This order establishes policy and procedures and assigns responsibility for assuring agency compliance with the National Environmental Quality Act (NEPA).

A notice of proposed revisions to FAA's policies and procedures for implementing the National Environmental Policy Act and a request for public comment were published in the Federal Register on October 13, 1999. ([Link to notice in PDF format.](#)) Comments received on or before January 11, 2000 will be considered in preparing the final policies and procedures, FAA Order 1050.1E.

- Rules of Practice for Federally Assisted Airport Enforcement Proceedings (14 CFR Part 16) -- Part 16 sets out the rules governing proceedings instituted by the FAA or by a complaint concerning assurances contained in airport property deeds from the U.S. government to local agencies and in FAA grants in aid.

CALIFORNIA

Tip The complete California Code of Regulations are available on the Web site of the [California Office of Administrative Law](#).

- Noise Standards (21 Cal. Code Reg. 5000 et seq.) "The purpose of these regulations is to provide a positive basis to accomplish resolution of existing noise problems in communities surrounding airports and to prevent the development of new noise problems." See [Regulation of Noisy Airports in California](#) for a summary of these regulations. The regulations are issued by the Department of Transportation's [Aeronautics Program](#), Office of Technical Services (Bob Moore, chief). For an official statement on the limited utility of these regulations, see [Role of the State of California in Airport Noise Abatement](#).

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Local Ordinances

BLUE ASH, OHIO

The Cincinnati-Blue Ash Airport lies within the city limits of Blue Ash but is owned by the City of Cincinnati. Out of concern for the noise of aircraft departing the airport, the City of Blue Ash enacted an ordinance requiring pilots departing the airport to make specified turns in order to reduce aircraft noise in residential areas. In *United States v. City of Blue Ash* (U.S. Ct. So. L. Ohio, 1978; 487 F.Supp. 135; aff'd, 6th Cir., April 15, 1980, 621 F.2d 227) the court declared the ordinance invalid because the federal government has preempted the field of regulating aircraft in flight.

BURBANK, CALIFORNIA

Measure A -- Passed by voters in a special election in October 2001, this initiative requires that a nighttime curfew and cap on flights be imposed at the Burbank-Glendale-Pasadena Airport before any expansion of the airport is undertaken. The initiative was declared invalid by a court.

- **City manager's memorandum on Measure A** (April 17, 2001)
- **City attorney's memorandum on Measure A** (April 16, 2001) -- Discusses implementation issues.
- **City of Burbank v. Burbank-Glendale-Pasadena Airport Authority** -- The City of Burbank, which never opposed the purpose of Measure A, brought this lawsuit because it thought that implementation of the measure was legally problematic.

Superior Court opinion (Aug. 23, 2002) -- declares that Measure A impermissibly interferes with powers delegated to the city council by state law.

Court of Appeals opinion (Nov. 19, 2003) -- affirms lower court decision.

CLEARWATER, FLORIDA

City Code Section 4.23 (amended Nov. 1, 2001) -- prohibits flying between 9 p.m. and 7 a.m.

HAYWARD, CALIFORNIA

City Ordinance 91-16 (July 23, 1991) -- An example of noise regulation based on absolute noise limits (the "single event noise exposure level" or SENEL). (The Santa Monica, California, Airport has a similar regulation.) This ordinance is a revision of a 1975 ordinance, enacted before the federal Airport Noise and Capacity Act of 1990 restricted the ability of airports to adopt noise abatement programs. A lawsuit challenging the 1975 ordinance resulted in the important "proprietor exception" to federal preemption of local regulation of aircraft noise; see *National Aviation v. City of Hayward* (1976).

HONOLULU, HAWAII

City Ordinance 40-6.1 (amended 1996) -- The ordinance bans the use of aircraft for advertising in any way. It was upheld by the 9th Circuit Court of Appeals in *Skysign Intern., Inc. v. City and County of Honolulu*. The court held that federal aviation law did not preempt local ordinances regulating aerial advertising because Congress did not so completely occupy the field of aviation as to preempt the subfield of aerial advertising. (In contrast, see *Banner Advertising, Inc. v. City of Boulder* (Colorado Supreme Ct., 1994; 868 P.2d 1077). The *Banner* court found that federal law preempted Boulder's ordinance banning aerial advertising. The *Skysign* court distinguishes that case; see footnote 6.)

LEE'S SUMMIT, MISSOURI

Proposed city charter amendment (2005) -- Activists put this amendment to a vote by an initiative, which was defeated (56% against) in a special election for which about 20 percent of registered voters turned out. The amendment would have required "any expansion" of the local airport to be approved by voters. A similar measure in Burbank (Calif.), which voters approved, was declared invalid (see above).

LOS ANGELES, CALIFORNIA

City of Los Angeles Ordinance: Van Nuys Airport Noise Abatement (August 10, 1981) -- The ordinance establishes a "no flight curfew" for certain types of planes between 11 p.m. and 7 a.m.; bans "touch and go" flying between 9 p.m. and 7 a.m. from September through June and between 10 p.m. and 7 a.m. the rest of the year; establishes a preferential runway for traffic between 11 p.m. and 7 a.m.; and prohibits engine maintenance "run ups" between 7 p.m. and 7 a.m.

NAPLES, FLORIDA

City of Naples Airport Authority Resolution #2000-8 (Nov. 16, 2000) -- Prohibits stage-2 jets. The ordinance was upheld in a lawsuit, but subsequently the FAA challenged the ordinance through its own administrative process (see Administrative Cases).

ORANGE COUNTY, CALIFORNIA

Measure A -- Passed by voters in November 1994, this initiative amended the county's general plan to require that the former El Toro Marine Corps Air Station "shall be used for a publicly or privately owned and operated airport."

Measure S -- Defeated by voters in December 1996, this initiative would have repealed Measure A.

Measure F -- Passed by voters in March 2000, this initiative requires a two-thirds vote of the electorate for approval of any airport projects. The measure was declared invalid by a court. However, because passage of the measure reflected widespread opposition to development of a civilian airport at the former El Toro Marine Corps field, the mere passage of the measure killed any prospect of a civilian airport at the El Toro field.

- **History of Measure F**
- **Citizens for Jobs and the Economy et al. v. County of Orange** -- Proponents of a civilian airport at El Toro field challenged Measure F.
 - Superior Court opinion (Dec. 1, 2000) -- Superior court declares Measure F invalid in its entirety.
 - Court of Appeals opinion (Jan. 4, 2002) -- The court affirms the lower court judgment. (Link is to PDF file; requires Acrobat Reader.)

Measure W -- Passed by voters in March 2002 (58% county-wide, 87% in southern portion of the county), this initiative repeals Measure A (see above) and amends the county's general plan to designate the former Marine Corps Air Station for use as a park, educational and cultural facilities, and other nonaviation uses.

POMPANO BEACH, FLORIDA

City Code Section 93.06: Noise Abatement Limitations (July 18, 1995) -- Restricts weekday hours of touch-and-go flying and prohibits same on weekends and holidays. (See also airport noise abatement guidelines.)

- **AOPA Complaint Against Ordinance** (April 1, 2004) -- The Aircraft Owners and Pilots Assn. filed a formal complaint with the FAA, demanding a hearing under 14 C.F.R. Part 16. The complaint alleges that the ordinance does not comply with the conditions under which the airport land was deeded to the city by the U.S. government.

SAN JOSE, CALIFORNIA

City Code Chapter 12.03: Airport Curfew (October 21, 2003) -- Prohibits takeoffs or landings within curfew hours by aircraft exceeding an average of 89 decibels. The ordinance was adopted after legal challenges to the city's previous curfew. Under a previous curfew, adopted in 1984 (see below), aircraft were categorized according to both noise level (stage 1 being the noisiest and stage 3 the quietest) and weight (heavier airplanes being defined as "transport aircraft" and lighter airplanes as "non-transport aircraft"), and aircraft operators were classified either as commercial "air carriers" or as non-commercial "general aviation" operators. Whether a particular aircraft was exempt from the curfew or eligible for a waiver of its provisions depended on the interplay of these factors. The 1984 curfew was not only attacked in court but was also the subject of an informal complaint to the FAA filed by the Aircraft Owners and Pilots Association. The 2003 ordinance was drafted in collaboration with the FAA.

Aircraft Restrictions (Curfew) (1984, amended 1988, superseded 2003)

- **AOPA Complaint Against 1984 Curfew** (January 2000) -- This informal complaint alleges that the curfew violated the conditions of FAA's Airport Improvement Program grants to the airport. [To be posted]
- **Wing and a Prayer, Inc. v. City of San Jose** (2001, U.S. District Ct., N.D. Cal., Case No. C 00-20018 JF, unpublished) -- Billionaire Larry Ellison challenged the city's curfew on aircraft weighing more than 75,000 pounds. The judge ruled that the city's curfew did not apply to Ellison's jet, but stopped short of declaring the curfew unlawful. The decision posted here is on motions for interlocutory relief (prior to final judgment). The case was subsequently dismissed per an agreement between the parties, Dec. 18, 2002 (see [settlement agreement](#)).

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Foreign/International

FOREIGN

European Union

European Union Directive 92/14/EEC (March 2, 1992) -- Bans operation of "stage-2" aircraft in the European Community after April 1, 2002.

European Union Directive 2002/30/EC (March 26, 2002) -- Establishes rules and procedures with regard to the introduction of noise-related operating restrictions at airports

within the European Community. (File is 120 kB Acrobat PDF.)

Switzerland: Legal Basis of Noise Abatement

United Kingdom: Airport Noise Regulation -- See also Department of Transport: Aviation.

INTERNATIONAL

Convention on International Civil Aviation -- Annex 16, Vol. 1, Part II, Chapter 4 establishes the most current (as of 2002) noise standards for jet aircraft engines. (The annexes to the Convention are available at the International Civil Aviation Organization e-Shop by subscription only. So much for free public access to documents prepared in the name of the public.)

International Civil Aviation Organization

33rd ICAO Assembly Resolution A33/7 -- Establishes a "balanced approach" to noise management, including four elements: (1) reduction of aircraft noise at the source, (2) land-use planning and management measures, (3) operational procedures, and (4) operating restrictions. (To get the text of Resolution A33-7, go to the ICAO website, find the page for the 33d Assembly, then click on "Resolutions".)

Miscellaneous Legal Documents

FEDERAL

Executive Order 12898, Environmental Justice Program in the Federal Government, issued by the President on February 11, 1994.

CALIFORNIA

California Attorney General's Opinion, 69-216, 53 Op.Atty.Gen. 75 (1970). Opinion includes: (1) The federal government has occupied a portion of but has not preempted the entire field of regulating aircraft-produced community noise and state and local governments may legislate in the field if there is no conflict with federal statutes or regulations. (2) State and local governments which are airport proprietors may regulate aircraft-produced community noise in their capacity as proprietors despite federal statutes or regulations covering the field. (3) State and local governments may regulate aircraft-produced community noise by land use controls such as airport siting and zoning without restriction by the federal government.

California Attorney General's Opinion, 90-914 (1991). Opinion: The jurisdiction of a county airport land-use commission is limited by county boundaries.

California Attorney General's Opinion, 94-903 (1995). Opinion: The names, addresses, and telephone numbers of persons who have filed noise complaints concerning the operation of a city airport are subject to public disclosure unless the city can establish in the particular circumstances that the public interest served by not making the information public clearly outweighs the public interest served by disclosure. The opinion outlines a balancing test for weighing disclosure versus nondisclosure. (The balancing test was used in 1999 by an appellate court in the case of City of San Jose v. Superior Court (Mercury News). The court concluded that in this case a newspaper was not entitled to learn the identity of complainants.)

California Attorney General's Opinion, 03-805 (2004). Opinion: A county airport land use commission may not exempt a specific plan adopted by a city or county from compliance with the commission's more stringent compatibility standards for land use, development density, and development intensity in the vicinity of a public use airport. (These commissions were created by the state in part to restrain construction of housing and other noise-sensitive uses near airports.)

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