

Part 150: Records of Approval

Naples Municipal Airport, Naples, Florida

Approved on 9/29/97

Revision 1

The approval listed herein includes approval of an action that the airport recommends be taken by the Federal Aviation Administration (FAA). It should be noted that this approval indicates only that the action would, if implemented, be consistent with the purposes of 14 C.F.R., Part 150.

The operational measure below summarizes as closely as possible the airport operator's recommendation in the Noise Compatibility Program (NCP) Update and is cross-referenced to the program. The statements contained within the summarized operational measure and before the indicated FAA approval do not represent the opinions or decisions of the FAA.

Background

In February 1997, the Naples Airport Authority (NAA) submitted to the FAA an Update to the Part 150 Noise Compatibility Program (NCP) for Naples Municipal Airport (APF). The Update consisted of 15 measures, one which would allow operations by Stage I aircraft (weighing less than 75,000) only between the hours of 7 a.m. to 10 p.m. The FAA approved the nighttime curfew and most of the other measures submitted by the airport sponsor. In March of 1998, the NAA submitted a second Update to its Part 150 NCP. In that Update, the NAA proposed extending the current Stage I curfew to a full, 24-hour ban, thereby prohibiting the operation of any Stage I aircraft weighing less than 75,000 pounds at APF.

On September 18, 1998, the FAA published a notice in the Federal Register announcing that it would be reviewing the NCP submitted by Naples and requesting comments. 63 FR 49942. The FAA received one letter, from the National Business Aviation Association (NBAA), dated March 27, 1998. That letter indicated that it supplemented its earlier May 28, 1997, comments on the 1997 NCP for Naples, objecting to restrictions on Stage 1 aircraft operations. The March 27 letter summarized NBAA's earlier comments, objecting to the Stage 1 ban. As grounds for its objection, the NBAA argues that: (1) the terms of the 24-hour ban deprives public access on unfair and unreasonable terms, (2) the terms of the ban are unjustly discriminatory, and (3) the ban is preempted by federal law. In July of 1998, the NAA provided additional clarification through its consultant, Harris Miller Miller and Hanson, Inc. (HMMH), in response to issues raised during FAA's preliminary review. The analysis and July supplement include evidence of the noise benefit that will accrue to neighboring communities as a result of the ban, statistics on the number of Stage I aircraft operating nationally as well as the number operating at Naples, and information about the existence of other nearby airports available for use by Stage I operators.

OPERATIONAL MEASURES

1. Extend Existing Nighttime Stage 1 Use Restriction to 24 Hours.

The Naples Airport Authority (NAA) requests that the FAA approve extension of the existing nighttime curfew on operations by Stage I aircraft (10 p.m. to 7 a.m.) to a 24 hour ban.
"Emergency, medical, or government flights or other flights which are for the benefit of public

health, safety, and welfare would be exempt from the ban." (NCP Update, February 1998; Amendment to NEM and NCP prepared by HMMH, Report 295500, July 24, 1998).

APPROVED. The NCP demonstrates that the recommended Stage 1 ban provides a noise benefit both in the short term and in the five year planning timeframes. In 1998, the Stage I ban is predicted to reduce the number of residential dwelling units within the 65 dB DNL from 184 to 77 dwelling units, and to remove 120 individuals from the 65 dB DNL contour. In 2003, the number of residences significantly impacted by noise would be reduced from 185 to 146, and the number of individuals impacted would be reduced by 156. In addition, the ban is reasonable because there are no Stage I aircraft based at the Airport and less than two operations per day are affected by the ban. There are seven companies operating Stage I aircraft at APF; two companies use the aircraft primarily for ambulance services, two other companies have alternate non Stage I aircraft they can utilize, two companies operating only Stage I aircraft offered no objection to the ban, and only one company indicated that the ban would impose an inconvenience but not a financial hardship. For those who do not own alternative aircraft, the impact will be minimal because there are two other airports located within 30 miles of the city of Naples that can accommodate the affected aircraft.

As a matter of policy, FAA does not consider the use of aircraft stage designations to be unjustly discriminatory per se. Moreover, the ban is not unjustly discriminatory because Stage 1 aircraft are the loudest type of aircraft operating at Naples.

The exemptions to further public health, safety, and welfare, which were applied in 1997 to the Stage 1 nighttime curfew, are being extended to this 24-hour ban. The FAA commented in September 1997 that the exception of emergency medical flights is a justifiable exception.

The ban on operations by Stage 1 aircraft weighing less than 75,000 pounds is not federally preempted because the scheme of federal regulation of Stage 1 aircraft is not so pervasive as to make reasonable the inference that FAA left no room for airport proprietors to supplement it. The FAA's interest in Stage 1 aircraft is not so dominant that the federal system should be assumed to preclude enforcement of local rules on the same subject, and because the goals of FAA regulation and obligations imposed by FAA do not reveal any purpose to preclude the exercise of State authority. See Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). See Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 203-204 (1983).

By stating its intent to conduct further study and actions as may be appropriate when it required the gradual elimination of operations by Stage 1 aircraft weighing more than 75,000 pounds, FAA did not intend or ordain complete preemption of regulations of operations by all Stage 1 aircraft. In the preamble of the final rule that phased out operations by Stage 1 aircraft weighing more than 75,000 pounds, FAA stated "...operating noise limits for turbojet airplanes weighing 75,000 pounds or less cannot be adopted in a manner consistent with the constraints in...the Act. However, the FAA is expanding its comprehensive analysis of the public impact of aircraft noise. As the results of this study become available over the next two years, FAA will undertake such actions as may be appropriate." 41 FR 56055 (December 23, 1976). Since 1976, the FAA has not conducted the contemplated study and has not undertaken further action, with the result that the use of such aircraft is being gradually eliminated through attrition. Although FAA Advisory Circular 150-5020-1, Airport Noise Compatibility Planning, dated August 5, 1983, and the 1976 Department of Transportation Aviation Noise Abatement Policy warn about conflicts between local airport rules and the federal scheme concerning deadlines for retrofit or replacement of Stage 1 aircraft, when these statements are read in context it is clear that the FAA is speaking only about Stage 1 aircraft weighing more than 75,000 pounds. These guidance documents are silent about Stage 1 aircraft weighing less than 75,000 pounds. Neither document clearly manifests FAA intent to supersede the exercise of proprietary power.

Given FAA's exercise of a detailed and supervisory role over Stage 1 aircraft weighing more than 75,000 pounds, FAA's silence in these circumstances should not be presumed to be or construed as a barrier to action by Naples Airport Authority to establish requirements as to the permissible level of noise created by Stage 1 aircraft weighing less than 75,000 pounds using its airport. Based upon the small number of such aircraft left in the total U.S. fleet, estimated by NAA's reported research as less than 50, FAA has determined that further action is not appropriate because there are no federal concerns requiring national regulation. There do not appear to be any appreciable risks of disruption in traffic to and from airports or economic distress among carriers that require a federal policy to balance the goal of noise reduction with economic and technological difficulties.

Additionally, this is not a case where preemption results from actual conflict between state and federal law. As there is no federal requirement concerning the pace of elimination of operations by Stage 1 aircraft weighing less than 75,000 pounds, aircraft operators may comply with this local ban on such operations. Based upon the record before us, it does not appear that the Stage 1 ban at Naples Airport would stand as an obstacle to the accomplishment and execution of purposes and objectives of Congress and the FAA. The small number of such aircraft, the fact that none are based at or used by air carriers at the airport, and the role of Naples Airport indicate that the ban would impose a minimal burden on interstate commerce. Should impacts on air commerce occur which are unforeseeable at the time of this approval, or should the FAA receive significant new information such as that the exemptions are granted in an unjust manner, the FAA will reevaluate this determination upon receipt of new information to ascertain whether it still meets the standards for Part 150 approval.