

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 194 final

Brussels, 12 April 1983

## COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Further Community response to the United States Department of State  
objecting to their rule on Aircraft Operating Noise Limits

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Council Secretariat information note 8822/80 AER28 ENV140 dated 28 July 1980 which followed the 991st meeting on 19 June 1980 of the Committee of Permanent Representatives, notified that an aide-mémoire had been delivered to the United States Department of State, the Federal Aviation Administration (FAA) and the Environmental Protection Agency, which contained a firm Community objection to implementation of the FAA Notice of Proposed Rule-making (NPRM) 80-7 for operating noise limits, as applicable to foreign registered aircraft.

The FAA published the final rule on 28 November 1980 with very little concession to the Community objections and to similar objections from a large number of individual foreign states.

The International Civil Aviation Organization (ICAO) at its 23rd General Assembly in September/October 1980 agreed a Resolution confirming the previous ICAO Council decision requesting no action before 1 January 1988 of the kind that the USA had taken.

Following consultation by Commission representatives with the Association of European Airlines (AEA), the Aircraft Noise Experts of all Member States and the Aircraft Noise Working Group of the European Civil Aviation Conference (ECAC), it was agreed by the Permanent Representatives Committee at its 1036th meeting on 1 July 1981 that the Community should make a further objection to the United States of America and the démarche was made on 15 July 1981 in the manner as set out in doc. 7192/81 AER20 ENV99 + Cor. 1.

A copy of the response from the United States was circulated in Council Secretariat information note 8202/81 AER26 ENV115. The USA made some concessions to the Community position and promised full and proper consideration to every case presented for consideration and said that they would grant exemptions where justified. However they made no concession to the major principle objections that the international noise standards of ICAO Annex 16 should be fully recognized for foreign registered aircraft by the USA and that they should comply with the relevant Resolution of the 23rd General Assembly of ICAO.

ECAC also submitted formal objections to the United States Authorities in a similar manner to those presented by the Community; with similar responses. ECAC then, on 10 June 1982, submitted a petition to the United States, in accordance with certain FAA rules, that the USA should amend their operating Noise Rules to ensure that the principles referred to above should be honoured.

The Commission in their role as an observer for the Community at the ECAC Aircraft Noise Working Group assisted in the preparation of the petition. That ECAC Working Group has intimated that any equivalent petition from the Community would be helpful and a Commission Working Group of Aircraft Noise Experts from all Member States (except Luxembourg) has agreed in its November 1982 meeting that they support that approach. Accordingly, attached is the draft of a proposed petition to the FAA for amendment of their Aircraft Operating Noise Limits which has been prepared in the format required by Federal Aviation Regulation (FAR) 11.25.

It is suggested that the Community should not relax its pressure on the United States to correct a regulation which is so obviously contrary to normal international action in the field of aviation, particularly as in the significantly changing political approach to environmental matters now taking place in the United States we have now a better chance of success.

AIDE MEMOIRE

No significant changes were made by the Federal Aviation Administration (FAA) to their rule on "Operating Noise Limits for certain Turbojet Aircraft engaged in Domestic or Foreign Air Commerce in the United States" following the aide-mémoires from the European Economic Community to the Department of State dated June 27, 1980 and July 15, 1981.

The response of the FAA of August 12, 1981 and previous justifications refer to domestic problems. These are understood, and the Community fully sympathizes with them as they are similar to those experienced within the Community. However, the Community has complied fully with international agreements.

The FAA, in the view of the European Economic Community, has not justified the fact that their rule imposes on foreign registered aircraft domestic noise Standards and not those of the internationally agreed Noise Standards of Annex 16 to the Chicago Convention, of which the United States is a signatory. The concessions that were made to Annex 16 in the final rule are not substantive and still rule out aircraft that meet the international Standards but which do not meet the United States domestic regulation. Similarly the FAA have still failed to act in accordance with the internationally agreed International Civil Aviation Organization (ICAO) Resolution A23-10.

The European Economic Community considers strongly that in the interests of the orderly development of air transportation it is incumbent on the United States authorities to ensure that international agreements in the field of aviation are honoured as far as foreign registered aircraft are concerned as has been done by the Community.

Therefore, in accordance with Federal Aviation Regulation (FAR) Part 11, Section 11-25 the European Economic Community petitions the Administrator of the United States Federal Aviation Administration of the Department of Transportation, through the Department of State, for amendment of FAR Part 91 - General Operating and Flight Rules to bring them in line with international agreements.

The petition is attached herewith and it would be appreciated if, in the interests of comity, the Department of State would give this petition its full support.

Administrator  
Federal Aviation Administration  
Rules Docket (AGC - 204)  
800, Independence Avenue  
Washington, DC 20591  
U.S.A.

Petition from the European Economic Community to the Administrator of  
of the United States Federal Aviation Administration (FAA) of the Depart-  
ment of Transportation for Amendment of Federal Aviation Regulations (FAR)  
Part 91 - General Operating and Flight Rules - in accordance with FAR  
Part 11 Section 11-25

Objective

1. This proposed amendment to Federal Aviation Regulations (FAR) - Part 91 if agreed would alter amendment 91/171 concerning "Operating Noise Limits for certain Turbojet Aeroplanes engaged in Domestic and Foreign Air Commerce in the United States"
2. The amendment would ensure that the United States regulation followed normal international practice in the field of Aviation. This would be done by allowing aircraft not on the United States Aviation Register, that are permitted by internationally accepted aircraft noise Standards not to be noise certificated, to fly to and from the United States up to at least January 1, 1988, and thereafter, aircraft that meet the international noise Standards and are noise certificated to them will be permitted to continue to fly to and from the United States.

Background

3. The International Civil Aviation Organization (ICAO), of which the United States is a member and whose Convention is signed by the United States, has requested in Resolution A23-10, all States not to prohibit the operation of foreign registered non-noise certificated subsonic jet aeroplanes into and out of their territories before January 1, 1988. This date was agreed by a vast majority in the full assembly of the 149 Member States of ICAO in 1980 and forms part of Resolution A23-10.

International Standards for aircraft noise are published in Annex 16 to the Convention on International Aviation.

They were prepared with the assistance of the United States.

These Standards are accepted as such for foreign registered aircraft by most of the Member States of ICAO. The United States as far as is known, being the only Member State not to accept them (unless they are equivalent to FAA-FAR- Part 36).

4. The proposed amendment if agreed would be in accord with a statement made by President Reagan who, during the United States Air Traffic Controllers strike, wrote to CAB Chairman - Marvin S. Cohen that :

" it is especially important during this period that the United States demonstrates its continued support for an international aviation system founded on comity and reciprocity, and its sensitivity to foreign government concerns."

In the same context President Reagan also noted :

"in light of the present situation, I consider it essential that the United States take every reasonable step to reassure the international aviation community of our willingness to address matters of common concern in a cooperative manner."

5. Although the remarks of the President of the United States were in another context, their applicability in matters of internationally agreed noise Standards, also the concern of other Nations as expressed in their comments on FAA NPRM 80-7, can hardly be disputed.

Detail of Proposed Amendment to FAR - Part 91

6. Subpart E - "Operating Noise Limits"

a) Section 91-301

(i) 91.301(b), Page 49, line 14, after "United States", insert :  
"but registered outside the United States."

(ii) 91.301(b), Page 49, lines 17-25, delete from and including the words - "when those requirements", to the end of the paragraph (ie to and including " .... were Part 36 noise levels")

b) Section 91.303

- (i) Annotate existing paragraph as sub-para (a)
- (ii) Sub-para (a) line 5, insert after " ... subpart", the words "that is registered in the United States",
- (iii) After subpara (a) insert new subpara (b) as follows  
 . "b) On and after January 1, 1988, no person may operate to or from an airport in the United States any subsonic airplane covered by this subpart that is registered outside the United States unless that airplane has been shown to comply with at least the noise Standards of Chapter 2 of Volume I of Annex 16 to the Convention on International Civil Aviation."

c) Sections 91.306 and 91.307 - all references to section 91.303 shall read 91.303 a)

7. It is suggested that the above proposed amendments are not the only amendments that could be used to achieve the objective stated in para 2 above nor are they necessarily exhaustive. However they are sufficient to illustrate to the FAA the purpose of the proposal.

Justification

- 8. It should be noted that the following comments are in addition to those in paragraphs 2 - 5 above. They are in general, in argument against the justifications outlined in the "Supplementary Information" provided by FAA on publication of its Final Rule on "Operating Noise Limits" as amendment No 91/171.
- 9. General Comment. It is international practice that a national aviation administration when applying regulations more stringent than those which are internationally agreed, does so only in respect of its own registered aircraft. It does not usually apply such rules to foreign registered aircraft. In this way the orderly development of internationally agreed aviation Standards and Recommendations can best be achieved.



10. Amendment 91/171, in as much as it is applied to foreign registered aircraft, is not only contrary to normal international practice (for relatively minor national advantages) but its application is believed to be contrary to the expressed opinion of the President of the United States, as quoted in paragraph 4 above.
  
11. ICAO Assembly Resolution A23-10. The FAA complains that agreement was not reached in ICAO, after its unilateral declaration of Nov. 18, 1976, where it was stated that if agreement was not reached in ICAO by 1980 on the application of noise Standards to non-noise certificated aircraft, regulatory action would be taken. However the ICAO Assembly did reach an agreement which resulted in the ICAO Resolution A23-10 of October 1980 (following a similar decision of the ICAO Council in May/June 1979). This was agreed by a large majority of the entire ICAO Assembly and was an agreement democratically reached, even if by consensus; the United States being one of the minority of States which opposed the Resolution. It is therefore difficult to see how the U.S. can claim that an agreement has not been reached in ICAO and to use this as justification for applying its domestic regulation to foreign registered aircraft 3 years before the date requested by ICAO as the earliest date such action should be taken. It is understood that at least three other ICAO Contracting States adapted their national regulations to abide by that Resolution. There seems to be good reasons for the United States to adopt a similar attitude.
  
12. Health. It is suggested that it has not been satisfactorily proved that the health of United States citizens will suffer as has been implied, because of the minority of foreign registered aircraft, compared with the numbers of Domestic aircraft, that will be admitted if non-noise certificated foreign registered aircraft are allowed to fly to and from the United States until Jan. 1, 1988. Especially considering the numbers of such domestic registered aircraft that will be exempted to Jan. 1, 1988. Similarly it is not thought that health will be impaired if foreign registered aircraft, that meet international noise Standards, are permitted to fly to and from the United States after January 1, 1988.

13. Annex 16 to the Convention on International Civil Aviation. The United States participated in the preparation of the Aircraft Noise Standards agreed internationally. It is agreed that under Article 38 of the Convention on International Civil Aviation, differences to ICAO Standards can be notified and a State can thus adopt its own noise Standards instead of those internationally agreed. However it is suggested that this does not give that State the right to apply those Standards to any but its own aircraft and certainly not to disqualify those foreign registered aircraft that do meet the international Standards of Annex 16.
14. The implication by FAA, in part of its justification for applying FAR 36 Standards to foreign registered aircraft, is that aircraft modified by retrofit to meet Annex 16 might have less acoustical technology applied than the same aircraft modified to meet FAR 36 and thus cause the artificial creation of two complying fleets, which is apparently objectionable to the FAA. The FAA has also implied that foreign registered aircraft must meet the same regulations as United States aircraft engaged in foreign commerce otherwise the latter will be at a competitive disadvantage. It is suggested that neither "two complying fleets" nor "competitive disadvantage" is created by the United States complying at this time with International practice, in any greater degree than was the case when the FAA in FAR 36 stage 2 applied, over 10 years ago, more stringent noise Standards to its own aircraft than were applied by Chapter 2 of Volume I of Annex 16, to foreign registered aircraft.
15. The concessions given to Annex 16 in the Final Rule as compared with NPRM 80-7 were entirely illusory as they were conditional to acceptance of only those parts of Annex 16 which are virtually the same as FAR-36.

### Conclusion

16. Accordingly it is requested that FAR-Part 91 be amended as stated in Paragraph 6 above or similar amendments be introduced into Federal Aviation Regulations to achieve the same objective.
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Petition from the European Economic Community to the Administrator  
of the Federal Aviation Administration (FAA) for amendment of FAR 91 in  
accordance with FAR II.25

SUMMARY

This petition proposes amendments to FAR 91 Subpart E - "Operating Noise Limits" Sections 91.301; 91.303; 91.306 and 91.307. If approved the effect would be to adjust amendment 91/171 in as far as it affects civil subsonic aircraft registered outside the United States.

Amendment 91/171 was introduced as a result of the FAA final rule on operating noise limits for certain turbojet airplanes engaged in domestic or foreign air commerce in the United States. It became effective on November 28, 1980 and is effective as far as foreign registered aircraft are concerned, from January 1, 1985.

The proposed amendment would ensure that the United States regulation was in accordance with international agreements on aircraft noise. In particular United States aircraft noise regulations would not be applied to foreign registered aircraft until January 1, 1988. The full Assembly of the International Civil Aviation Organization, the Convention for which was signed by the United States, has requested contracting States not to prohibit before January 1, 1988 the operation of foreign registered non noise certificated subsonic jet airplanes to and from their territories.

The proposed amendment also, would, after January 1, 1988, permit noise certificated foreign registered aircraft that met the internationally approved noise Standards of Annex 16 to the Convention on International Civil Aviation to land and take off in the United States.

The petition offers counter arguments to the FAA reasoning for requiring foreign registered aircraft to meet the domestic noise regulations of the United States. The foundation of these arguments is that to do so is contrary to accepted practice in the field of aviation, is contrary to the Standards and Recommendations of the International Civil Aviation Organization of which the United States is a Member, and is contrary to the expressed sentiments of the President of the United States.

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