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Before The
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
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Good afternoon, Mr. Chairman. I am pleased to discuss the actions the Department of Transportation is taking to implement the Aviation Safety and Noise Abatement Act of 1979, with specific reference to the application of the Act to foreign operators.

I shall begin by noting that the Federal Aviation Administration noise compliance regulation (14 CFR Part 91.303) is an operating rule which has as its purpose the reduction of aircraft noise by controlling

the problem at its source. This regulation is a central element of the Department's comprehensive program to provide relief to the five million Americans who suffer from aircraft noise.

Noise source regulation is a Federal responsibility--a responsibility which we take seriously. We have crafted our noise compliance regulation to reflect the will of Congress as expressed in the Aviation Safety and Noise Abatement Act of 1979. Section 302 of that Act directs the Secretary to issue a regulation requiring all operators engaging in international air transportation to meet FAA's existing (stage 2) noise standards by January 1, 1985. (Stage 2 refers to the level of noise abatement required for all commercial aircraft manufactured in the U.S. after January 1, 1974. Most Boeing 727s, for example, are stage 2 aircraft. More stringent Stage 3 requirements apply to newer model aircraft such as the MD-80 and B 757.)

The FAA regulations implementing Section 302 reflect a delicately balanced compromise between the interest of those communities within our country that suffer noise impacts, the needs of foreign and domestic carriers, and the need to maintain adequate domestic and international air service.

In 1979, when Congress considered the Aviation Safety and Noise Abatement Act, it recognized that some exemptions from the FAA regulation might be necessary, particularly since the first compliance deadline for domestic operators (January 1, 1981) was then imminent. Therefore, Congress required exemptions for two-engine aircraft to protect small community service and provided the Department with specific guidance in the Conference Committee Report (H.R. Report 96-715) for considering possible exemptions for operators of four-engine aircraft. With respect to the latter, that report provided that:

In evaluating carrier compliance for the four-engine requirements of Part 36, FAA is urged to give consideration to hardship situations involving smaller carriers where the carrier is making a good faith compliance effort but needed technology is either delayed or unavailable and rigid adherence to compliance deadlines could work financial havoc and deprive the public valuable airline service.

Congress also intended the 1979 Act to be the last word on this issue. The conference report states: "This legislation is intended to be the final resolution of this issue, except for extraordinary and unanticipated circumstances."

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I think it is important to emphasize that operators of aircraft affected by the regulation have known of the January 1, 1985 deadline since at least 1980. When the FAA Noise Compliance Regulation was first issued in 1976, the Department stated clearly in the regulations preamble and also in the Department's Aviation Noise Abatement Policy of that same year, that it would work through the International Civil Aviation Organization (ICAO) to achieve international noise standards and compliance schedules. It was also made clear that the U.S. would impose unilaterally the 1985 deadline on by both U.S. and foreign operators in international commerce if such ICAO standards and schedules could not be agreed upon by 1980. Subsequently, the Aviation Safety and Noise Abatement Act directed the Department to conform its regulations to international noise standards reached by ICAO prior to January 1, 1980. However, ICAO did not reach such an agreement.

The Department has consistently warned that applicants bear a heavy burden of proof, that few, if any, exemptions from the rule would be granted, and that no general relief should be anticipated. We have done so for several reasons.

First, granting wholesale exemptions would be inconsistent with the guidance Congress has already provided in the conference report. Second, we are mindful that U.S. and foreign international operators have had as much as eight years, and at least four years, to bring themselves into compliance.

Third, granting wholesale exemptions would be grossly unfair to the overwhelming majority of U.S. and foreign operators, including some from Latin America, that have brought their fleets into compliance.

Finally, wholesale exemptions could significantly undermine the environmental benefits that would otherwise accrue to the public.

As I mentioned earlier, we have adhered to the guidance in the conference report in evaluating exemption requests. The language of that guidance suggests that all the criteria listed--small carrier, hardship situations, and so on--must be applied as a group. We have, however, given particular attention to three criteria which together, in our view, establish the threshold for granting exemptions.

First, applicants must show specifically what "good faith compliance efforts" they will undertake. This is an essential element in the Congressional guidance and is a logical requirement for any petitioner seeking relief from the regulation. Almost every application reviewed to date has failed to demonstrate that the carrier has made and is continuing a good faith effort. Of the 98 applicants, only a very few have provided evidence of a firm commitment to retrofit or replace their aircraft to comply with the noise standards.

Let me be clear. Good faith compliance efforts are very important. In the past many of the carriers have shown anything but good faith. It is instructive to compare the pertinent dates of January 1, 1977, when the regulation was applied to domestic operators and U.S. and foreign international operators were placed on notice of U.S. policy, and November 28, 1980, when the FAA, at the direction of Congress, applied the deadline to U.S. and foreign international operators. While we have not completed our analysis of all the petitions, we note that the first 73 petitioners seeking an extension of the deadline operate 195 noncomplying aircraft. More than 68 percent of those aircraft were acquired since 1977 and 53.3 percent were acquired since 1980. Among the 49 operators which endorsed the Dade County petition for a blanket exemption for operators at Miami

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International Airport, 70.5 percent of their 132 noncomplying aircraft were acquired since 1980 and many were purchased within the past year. For example, one Latin American carrier has three noncomplying DC-8 aircraft in addition to five DC-10s (which are complying aircraft). One of those noncomplying aircraft was acquired in November 1983 and a second in May 1984.

The apparent reason behind these recent acquisitions is the depressed price of noncomplying aircraft because of the approaching deadline. Acquiring noncomplying airplanes at depressed prices, years after the rules were issued and, indeed, within a few months of the compliance deadline, seems a poor basis for asserting a claim of "good faith" efforts. The date of acquisition of these aircraft is not a controlling factor in our consideration of exemption request, but we cannot ignore it as an indicator of compliance disposition.

In order to meet the good faith compliance criteria, an applicant must first demonstrate its financial commitment to comply with the noise rule. This commitment can be evidenced in different ways, including but not limited to a substantial nonrefundable cash deposit, an irrevocable letter of credit, or some other

binding financial instrument. For example, in the case of aircraft that can be retrofitted with so-called hush kits, commitment of 10 percent to 25 percent of the retrofit cost would be considered adequate.

Second, the applicant must have entered into a binding contract to retrofit or replace each noncomplying aircraft for which an exemption is sought. Such a contract would have to be executed with a qualified hush kit manufacturer, airline, leasing company, aircraft manufacturer, or other party. If a carrier wishes to avoid any lapse in its operations, the contract would have to be executed and the exemption request completed and reviewed by the FAA prior to January 1, 1985, to ensure that compliance will be achieved.

Third, for each aircraft, the applicant must demonstrate that compliance will be achieved by the earliest practicable date, a date that must be approved by the FAA based upon such factors as the hush kit manufacturers' anticipated delivery schedules. In general, we would not expect those delivery dates to extend beyond 1985.

While these conditions are clearly not overly demanding, almost no carrier has yet provided this type of evidence of a good faith effort.

For those applicants who can demonstrate a good faith compliance effort in the future, we are also considering carefully the "valuable airline service" and "financial havoc" criteria from the conference report. With respect to the former, two considerations deserve mention in connection with international service. First, we wish to avoid creating situations where American carriers provide the only service to a foreign nation. Certainly, it is desirable to maintain service by one or more carriers of the nation served, where that can be achieved consistent with other considerations.

Second, we recognize that in a limited number of instances, service to a specific location may have particular equipment needs. Therefore, the Department will consider whether the service in the market can or cannot be reasonably provided by aircraft that comply with the rule.

The Department also considers the criterion of "financial havoc" to be important. In our opinion, an applicant must show that it will go out of business or suffer other very severe consequences if it is forced to comply. The simple claim of financial hardship is not sufficient, since many other carriers have already incurred substantial financial burdens to bring their

equipment into compliance. We will also look closely at the fleets of the applicant, to see whether there are complying aircraft already in its fleet that could provide substitute service.

In this connection, we recognize that there are a number of foreign carriers which are in very weak financial condition. Some of these are the flag carriers of nations which also have severe debt and hard currency problems. We will certainly look carefully at the overall situation of these carriers and will consult with the Department of State concerning possible foreign policy implications of our action on those carriers' exemption petitions.

The Department hopes that from this discussion, the Committee will understand why we have continuously warned that "few, if any exemptions will be granted." The guidance provided by Congress, our own view of the correct policy, and considerations of fairness to carriers which have complied, and the long history of consistent notice, all force us to analyze carefully each exemption request.

We are indeed examining each petition individually. While FAA has not yet granted any exemptions, there are a few applications on which technical reviews are being completed and that appear to be more promising than earlier ones. Because of the pendency of these petitions, it would be inappropriate for me to comment on any specific application.

The Department is well aware of the importance of the foreign policy implications of this regulation, particularly its impact on the economics of the Caribbean Basin. We recognize that many Caribbean nations--and some other nations also--lack substantial financial resources. Yet, we are encouraged to observe that many of these nations respect our commitment to environmental improvement and have brought their fleets into compliance. We have been working with the State Department, the U.S. Trade Representative, and the Caribbean Basin Initiative Task Force to satisfy foreign policy concerns while assuring compliance with the regulation. We have repeatedly communicated with our embassies in those nations to assure that there is no misunderstanding of the U.S. law or policy in this area. More recently, we have offered to work with the carriers individually and through the Latin American Civil Aviation Commission to assist in bringing carriers into compliance.

We shall continue to be responsive to the special needs of our Latin American neighbors--and to other nations, as well--while meeting our environmental responsibilities.

This concludes my prepared statement. I would be pleased to respond to any questions the Committee may have.