

reduction was recommended by EPA for noise attenuation. TVA's response is as follows: TVA has committed to further study the noise levels in the vicinity of the site to determine whether additional noise mitigation is needed and to identify appropriate mitigation methods. Source reduction in noise levels may not be the most cost effective way to prevent adverse impacts to area residents. TVA prefers to follow a plan to confirm the existence of community noise concerns, and to obtain adequate noise data which would allow for the verification of the legitimacy of the complaints and support the structuring of a suitable mitigation measure. This approach would avoid committing to a solution to a problem which may or may not exist, or be the best solution. As noted in the FEIS, potential mitigation measures include techniques for reducing noise at its source and methods that would reduce noise at receptor locations.

*EPA comment on TVA response 55* in the FEIS expressed a potential for an environmental justice (EJ) concern based on the demographics presented by TVA. There were also questions concerning the extent and success of public interaction with respect to EJ. TVA's response is as follows: As discussed in the FEIS, there are only three occupied dwellings within one mile of the Lagoon Creek Site. The EIS found only minimal environmental impacts and no significant environmental impacts on the residents of area surrounding the site. Due to the lack of significant impacts and the sparse population in the area, no EJ concerns were found. As discussed in Chapter 2 of the FEIS, the site screening process included several other sites for this project, but they were determined to be less suitable than the sites in Haywood County. Some of these sites have relatively smaller minority populations than does Haywood County. Residents of the surrounding area were given various options for expressing any concerns they might have. All affected landowners (over 100), which included all adjacent properties, were sent copies of the Executive Summaries of the Draft and Final EISs, along with an invitation to the public meeting on the DEIS. The meeting itself included not only a presentation about the project, but also, prior to the formal presentation, an open house where anyone could talk individually with TVA staff to discuss concerns or ask questions. Fewer than fifteen private citizens attended the public meeting on the DEIS, despite several paid advertisements in local and

regional newspapers and a TVA news release, each describing the availability of the DEIS and the public meeting date and time. No oral or written comments were received from any Haywood County resident not affiliated with local government. Among the elected officials involved, participants included one African American member of County Commission. None of the public comments received expressed concern about EJ issues. Benefits associated with the project include increased public revenues, along with a very small increase in employment and income in the area.

*EPA comment on TVA response 57* in the FEIS was concerned with induced economic impacts due to increased power system reliability. TVA's response is as follows: Our approach in preparing the FEIS section on Indirect Impacts was to assess the local (within the county) induced impacts of the proposed project. In keeping with CEQ guidance for evaluating indirect or induced effects, we believe that the regional effects of this proposal are not "reasonably foreseeable", or close enough in time and distance to the proposed project for a meaningful evaluation. Such an evaluation would certainly be speculative and qualitative, since it could not be predicted how, where, and when the additional peaking power would be used in the region, and consequently of little use to decision-makers regarding initiation of the proposal. We agree that basic utilities are critical to the economic viability of most any industry. TVA's mandate, as defined in the 1933 TVA Act, is, among other things, to provide reliable, low-cost power to the Tennessee Valley region and to foster industrial development for the economic good of the people of the region. It is our hope that more reliable peaking power and other infrastructure being developed by TVA will be attractive to potential new industries and lead to the expansion of existing ones. However, we believe that economic growth should not sacrifice environmental quality. We further believe that the regulatory programs of the various Valley states, in conjunction with TVA programs for sustaining the quality of the environment in the region, will allow economic growth to occur in a manner that maintains or enhances environmental quality.

Dated: May 1, 2000.

**Joseph R. Bynum,**

*Executive Vice President, Fossil Power Group.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Changes in Permissible Stage 2 Airplane Operations

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of statutory changes.

**SUMMARY:** The FAA is publishing notice of further changes to the Airport Noise and Capacity Act that except certain airplanes from the law and allow operation of Stage 2 airplanes after December 31, 1999, under specified circumstances. This notice is necessitated by Congressional action taken in April 2000 to modify the statutory changes adopted in November 1999. This notice explains the effect of the changes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Connor, Manager, Noise Division (AEE-100), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8933, fax (202) 267-5594, email [Thomas.Connor@faa.gov](mailto:Thomas.Connor@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Airport Noise and Capacity Act of 1990 (ANCA) prohibits the operation of civil subsonic turbojet Stage 2 airplanes over 75,000 pounds in the contiguous United States after December 31, 1999. The original version of the law did not distinguish airplanes by type of certification or operation. The waiver provisions of the original law are very limited, and address only limited revenues operation of Stage 2 airplanes by U.S. air carriers.

On November 29, 1999, the President signed into law certain changes to ANCA that affect operators of Stage 2 airplanes. The prohibit on revenue operations of Stage 2 airplanes after December 31, 1999, remained in effect. The Federal Aviation Administration (FAA) was not granted any new authority to allow anyone to operate at Stage 2 airplane in revenue service after December 31, 1999. The changes to the law were summarized in the **Federal Register** document published December 17, 1999 (64 FR 70571).

On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 10-181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) repealed the legislative changes that were adopted in November 1999 and were described in the **Federal Register** notice cited above.

The repealed provisions were re-enacted in AIR 21 with two additions.

## New Provisions

### Foreign Air Carrier Waivers

The original language of ANCA did not allow foreign air carriers to apply for a waiver from the Stage 2 prohibition in the law. The AIR 21 amendment expanded the waiver provision, 49 U.S.C. 47528(b), to allow foreign air carriers, for a limited time, to apply for a waiver from the Stage 3 aircraft requirement of 49 U.S.C. 47528(a). The amendment requires that a foreign air carrier seeking a waiver must apply "not later than \* \* \* the 15th day following the date of enactment of [AIR 21]." The law was enacted April 5, 2000; foreign air carriers seeking a waiver from section 47528(a) must have filed an application for waiver no later than April 20, 2000.

The FAA will consider any waiver request filed by a foreign air carrier under the same criteria that were used to evaluate requests from domestic air carriers. Those criteria are published at 14 CFR 91.873, and were summarized in a **Federal Register** notice published on March 2, 1998 (63 FR 10123).

### Relationship to Part 161 Actions

In AIR 21, Congress re-enacted the provisions that direct the Secretary of Transportation to permit certain nonrevenue flights to Stage 2 airplanes over 75,000 pounds, 49 U.S.C. 47528(f). A new paragraph (g), which reads as follows, was added to that section:

(g) Statutory Construction.—Nothing in this section may be construed as interfering with, nullifying, or otherwise affecting determinations made by the Federal Aviation Administration, or to be made by the Administration with respect to applications under part 161 of title 14, Code of Federal Regulations, that were pending on November 1, 1999.

Promulgated by the FAA in 1991 pursuant to ANCA, 14 CFR part 161 is titled "Notice and Approval of Airport Noise Access Restrictions," and provides a procedure under which local airport authorities may impose restrictions on Stage 2 and Stage 3 airplanes. On November 1, 1999, there was one restriction on operation of Stage 2 airplanes that had been adopted by a local airport authority but had not yet become effective. Prior to November 1, 1999, the FAA had made a determination that this local restriction was pre-empted by Federal law. The FAA understands new paragraph (g) to mean that this prior determination, and any future determination regarding the local restriction, are not affected by the

new provisions added to section 47528 by AIR 21.

The FAA has consistently held that the statutory waiver authority it was granted in ANCA in 1990 (49 U.S.C. 47528(b)) preempts any conflicting restriction adopted by a local airport authority. Similarly, the authority that permits nonrevenue Stage 2 flights under section 47528(f) also preempts any conflicting local regulations. This position is affirmed by the AIR 21 language, in that the authority given in section 47528(f) is not discretionary. The law states that "the Secretary *shall permit*" Stage 2 flights that fall under one of the categories listed in the law (emphasis added). The FAA's interpretation of the new language in paragraph (g) is consistent with the non-discretionary nature of the FAA's authority under section 47528(f).

### Previous Statutory Changes

As discussed above, the statutory change that allows the FAA to grant special flight authorizations for the nonrevenue operation of certain Stage 2 airplanes was re-enacted in AIR 21. Accordingly, except for the additions noted above, the explanations provided in the FAA's December 17, 1999 **Federal Register** notice remain applicable, and the application procedure and form have not been changed.

The FAA still plans to amend its regulations at 14 CFR part 91, subpart I, that are affected by the changes to its statutory authority. The reasons for these amendments remain the same as published in December 1999.

The FAA was required under the November 1999 legislation, and again by AIR 21, to publish notice of the procedures it will use to implement the Stage 2 nonrevenue flight authority. This notice fulfills that requirement by informing affected persons that the application procedure for a special flight authorization for nonrevenue Stage 2 flight remains as published in December 1999.

The special flight authorization application can be obtained on the FAA's web site (<http://www.aee.faa.gov/sfa/>), or by fax or mail by contacting the Office of Environment and Energy at the number listed in the For Further Information Contact section above. The FAA reminds operators that requests for special flight authorizations for nonrevenue Stage 2 flights should be filed 30 days before the planned flight.

Operators of Stage 2 airplanes that have any questions concerning their rights or requirements under AIR 21 language are encouraged to contact the FAA as soon as possible.

Issued in Washington, DC on May 2, 2000.

**Paul R. Dykeman,**

*Deputy Director, Office of Environment and Energy.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Faulkner County, Arkansas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Faulkner County, Arkansas.

#### FOR FURTHER INFORMATION CONTACT:

Amy Heflin, Community Planner, Federal Highway Administration, 700 West Capitol, Rm 3130 Federal Office Building, Little Rock, Arkansas 72201-3298, Telephone: (501) 324-5625; or Ronnie Hall, City Engineer, City of Conway, 100 East Robins, Conway, Arkansas 72032, Telephone: (501) 450-6165; or Mike Lynch, Project Manager, Garver Engineers, P.O. Box 50, Little Rock, Arkansas 72203, Telephone (501) 376-3633.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the City of Conway, Arkansas, and the Arkansas Highway and Transportation Department will prepare an environmental impact statement (EIS) on a proposal to construct a western loop in Faulkner County, Arkansas. The proposed project would involve the construction of an arterial on a new alignment starting west of the City of Conway at Interstate Highway 40 and terminating South of the City of Conway on Interstate Highway 40. Construction of a western loop is considered necessary to provide for the existing and projected traffic demand. A proposed alignment and typical section for this proposed project will be formulated during development of the EIS. Alternatives under consideration include taking no action and location alternatives to be identified during the EIS process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. An agency scoping meeting is planned early in the project