

which these separate actions would be coordinated. Particularly since the issuance of a single aircraft type-certificate is to be preferred, in our view, to the issuance of separate type-certificates for noise and for safety, the vesting of any Noise Certification authority under Title VI should be in the Administrator. It is all the more important that the Administrator be the sole certifying authority, to ensure against safety considerations being compromised in any way by noise abatement objectives having a distinct and separate purpose. This is a matter of great concern to the airlines industry in the light of past public statements by local and other officials that carriers "should not be allowed to escape prescription of noise rules on claims of threats to safety." Safety should never be subservient to noise.

Some ambiguity in this respect has already been introduced by H.R. 3400. The explanation of the bill states that it is intended to *expand* Title VI of the Aviation Act. Title VI of the Act is captioned, "SAFETY REGULATION OF CIVIL AERONAUTICS." But the bill does not propose to amend this caption of Title VI (e.g., "*Safety and Noise Regulation of Civil Aeronautics*"). It might thus be contended that Congress is manifesting an intention to constitute noise considerations as an *element* of safety (e.g., of persons and property on the ground, as in Title III of the Act). The legislation might thereby afford a new basis for litigation of noise claims, unless the ellipsis were satisfactorily explained in the debates and reports.

An even more fundamental ambiguity has been introduced by the bill's inclusion of authority, "to prescribe and amend such *rules and regulations*" as are found necessary for the control and abatement of aircraft noise and sonic boom. The Administrator's explanatory letter, dated January 11, 1967, recites that the bill is aimed at "*certification authority*" on the basis of noise *standards*, such as that now provided under safety standards in Title VI. The letter leaves the inference that the authority requested to promulgate "rules and regulations" is solely that required to "*govern*" the noise certification procedure.

But an examination of H.R. 3400 discloses nothing in the proposed new section 611 which would limit the rules or regulations to those *implementing* the new noise certification authority. On the contrary, subsection (a) would authorize the Secretary to,

" . . . prescribe and amend such rules and regulations as he may find necessary to provide for the control and abatement of aircraft noise and sonic boom, *including the application of such standards, rules and regulations in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by this title.*" (Italic supplied.)

The underlined words strongly imply that the requested authority to promulgate noise rules and regulations is *not* limited to regulations implementing or "governing" certification for noise.

If not so limited, the requested authority to promulgate noise rules and regulations is either superfluous or redundant. For the Administrator himself has stated in his explanatory letter that he already has authority to act "in the aircraft noise area" by prescribing "rules and regulations" under Title III of the Act, section 307(c). In fact, the purported grant of such authority by Congress at this time could only cast a cloud over powers already successfully claimed by the Administrator in litigation conflicting local ordinances.⁸

To remove these ambiguities and doubts, our substitute bill has recast the purpose, caption and language of H.R. 3400 to make clear that the Administrator is being empowered and directed only (1) to prescribe and amend reasonable standards for the measurement of aircraft noise and sonic boom, if he finds such action necessary and appropriate to encourage progress in aircraft noise abatement, and (2) to find, before issuing any aircraft type certificate under existing section 603(a)(2) of the Act, that the aircraft involved meets such standards.

When a given aircraft type has been issued a certificate as meeting the prescribed noise (or sonic boom) standard, it should not thereafter normally be necessary to have to meet additional *flight* rules or regulations purporting to establish a different, or more stringent, maximum noise level (or sonic boom standard). However, in an extraordinary situation, should flight rules and regulations for noise (or sonic boom) abatement be required as a supplement to noise certification, the Administrator now possesses such authority under section 307(c) of the Act.

⁸ *American Airlines, et al. v. Town of Hempstead, et al.*, E.D.N.Y. (1967), 272 F. Supp. 226.