

COMPARATIVE ANALYSIS OF SPECIFIC PROVISIONS

1. Scope of certification authority

H.R. 3400 would authorize the application of rules and regulations for the control and abatement of aircraft noise and sonic boom as well as standards of measurement of aircraft noise and sonic boom to "any certificate" authorized under Title VI. This is a wide departure from the draft legislation originally proposed by FAA, which would have been limited to *aircraft type certificates* under Section 603 of the Act.

The Administrator's explanatory letter confirms that the authority now being requested extends to certification authority over "airmen, aircraft, air carriers, airports and air agencies," without limit.

It is not clear how the requested authority would apply to airports. Nor is it clear why noise standards and rules should be included in the *certificates* of airmen, air carriers and air agencies. No such authority is required to enable the Administrator to enforce appropriate noise rules and regulations against all of these entities. If it became appropriate and reasonable to place the onus of a noise requirement directly on pilots or carriers, the Administrator has adequate authority to do so under the Act, through the prescription of flight rules and regulations. Under Sections IX and X of the Act, the Administrator can order compliance with any such rules and regulations established pursuant to the Act, and can assess civil penalties for violations.

But to authorize the insertion of noise terms and conditions in the *certificates* of airmen and carriers, on penalty of revocation for non-compliance, would not only be unnecessary and disproportionate to the objective of noise abatement, but susceptible of multiple jeopardy. For example, under H.R. 3400 the Secretary could condition an air carrier's *operating* certificate on its complying—on each take-off and landing—with whatever maximum noise level each local airport might establish. A similar condition could be placed in every airman's certificate, requiring pilots to comply with diverse locally-imposed noise limits on individual flights, on penalty of suspension or loss of their certificates.

Such authority is neither necessary nor appropriate to the end sought. Our bill accordingly would limit the application of the noise measurement standards to *aircraft type certificates*.

2. Mandatory vs. permissive authority

H.R. 3400 *empowers* the Secretary to promulgate and apply standards for noise certification, but it does not require him to do so, even where found necessary for the abatement of aircraft noise.

This is a significant weakness of the bill which should be cured. The substitute bill would *require* the Administrator to prescribe noise and sonic boom standards, once he has found such action necessary and appropriate "to encourage progress in aircraft noise abatement". The quoted language is intended to ensure against arbitrary or unreasonable standards, and against prescription of standards which are not technologically or economically feasible or justifiable.

Under the substitute bill, the Administrator would not only be required to prescribe noise and sonic boom standards, but would be precluded from issuing an aircraft type-certificate under Section 603(a) (2) until he first had found that the applicant aircraft has met such standards. If it were not so provided, those aircraft-type operators who had already had a noise standard applied against their aircraft's certification would have no assurance that competitive aircraft types would be subject to the same penalty, and that the noise standards would be non-discriminatory in their application.⁹

The compelling reason, however, for making the application of noise standards mandatory is to strengthen the role of the Federal Government in *preempting the field of aircraft noise regulation*. It is essential to the continued development of our national air transport system that conflicting local regulations for noise purposes not be permitted to impede that growth. If there is to be legal regulation of aircraft noise, it is imperative that it be by a single authority, and that the authority be the Federal Government. Unless multifarious local attempts to regulate aircraft noise will be precluded by any new Federal legislation, there is little point in additional Federal legislation.

⁹ This concern, of course, might not be met in the case of an aircraft of foreign manufacture, which could be exempted from any such certification compliance under Section 610(b) of the Act. The present practice of the Administrator is to exempt foreign aircraft from compliance with the type-certification requirements under the Act.