

SENSE OF CONGRESS ON EUROPEAN COUNCIL NOISE  
RULE

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SEPTEMBER 24, 1999.—Ordered to be printed

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Mr. SHUSTER, from the Committee on Transportation and  
Infrastructure, submitted the following

REPORT

[To accompany H. Con. Res. 187]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the concurrent resolution (H. Con. Res. 187) expressing the sense of Congress regarding the European Council noise rule affecting hushkitted and reengined aircraft, having considered the same, report favorably thereon without amendment and recommend that the concurrent resolution be agreed to.

BACKGROUND

On April 29, 1999, the European Union (“EU”) adopted a regulation that would restrict hushkitted and re-engined aircraft from use in the Members States of the European Union beginning in March 2002. The regulation targets recertified aircraft, defined as aircraft modified through technical measures—hushkits, engine modifications, or other technical measures—or indirectly through operational restrictions, such as weight restrictions and reduced flap settings. These measures, when imposed, allow the aircraft to meet the most restrictive U.S. and international noise standards.

The regulation provides that an EU Member State cannot place “recertificated civil subsonic jet aeroplanes” on its register after April 1, 2000. However, a recertificated aircraft that was on the register of an EU member state before April 1, 1999 can be freely transferred to the registry of another EU Member State.

Recertificated aircraft registered in non-EU States can not be operated in the EU after April 1, 2002, unless the operator can prove that these aircraft were both operated in the EU between April 1, 1995 and April 1, 1999, and have remained on the same register.

In addition, recertificated aircraft already on the register of an EU Member State cannot operate in the EU after April 1, 2002, unless they were already operating in the EU before April 1, 1999. The regulation was scheduled for implementation in May 1999, but was deferred for one year after discussions with the United States. Therefore, the time for registration has been extended until April 1, 2000.

As a result, noise-modified aircraft that meet U.S. and international noise standards that are registered in the United States and other countries outside of the EU may not be operated in the EU after May 2002.

The EU asserts this regulation is necessary to combat aircraft noise in and around the EU's major cities. The committee acknowledges that aircraft noise has been a significant issue in the aviation industry for many years. To combat aviation noise, Congress passed Public Law No. 101-508, 104 Stat. 1388-378, codified at 49 U.S.C. 47524. This law imposes significant noise restrictions on the industry. The most stringent of these restrictions, known as Stage 3 noise restrictions, have been phased in and require certain categories of aircraft to be fully Stage 3 compliant by December 31, 1999.

The International Civil Aviation Organization ("ICAO") has promulgated similar regulations known as Chapter 3 noise restrictions internationally. These restrictions become fully effective in 2002. A fleet may meet these most stringent Stage 3 or Chapter 3 restriction by various means. The most common means are: purchasing new aircraft that are manufactured to meet the restrictions; modifying an existing stage 2 engine by placing a device on it that makes the engine quieter and reduces aircraft noise to Stage 3 levels, a process known as hushkitting; or installing new, quieter stage 3 engines on an existing stage 2 aircraft, known as re-engining.

ICAO, created by the Chicago Convention, sets and administers international certification standards for aircraft. Once an aircraft is certified as having met ICAO standards, it may be used in any ICAO member country. ICAO certification gives operators and investors assurances of worldwide marketability for the normal life cycle of an aircraft.

The EU regulation is inconsistent with the noise certification standards promulgated by ICAO. It restricts the use of aircraft that were specifically designed to meet U.S. Chapter 3 and ICAO Stage 3 noise standards. ICAO has noted that the EU regulation is inconsistent with its standards and that the benefits and the effects of the regulation have not been fully evaluated.

Therefore, the Committee believes that the hushkit ban violates EU Member States' international obligations. Article 33 of the Chicago Convention requires EU Member States to respect airworthiness certificates of "recertified aircraft", because they meet ICAO standards. The EU regulation treats domestic and foreign operators differently in violation of the Convention's nondiscrimination principle and it violates EU Member States' bilateral air service agreements with the U.S.

The Committee finds that this violation of ICAO standards threatens the future of not only international aviation standards,

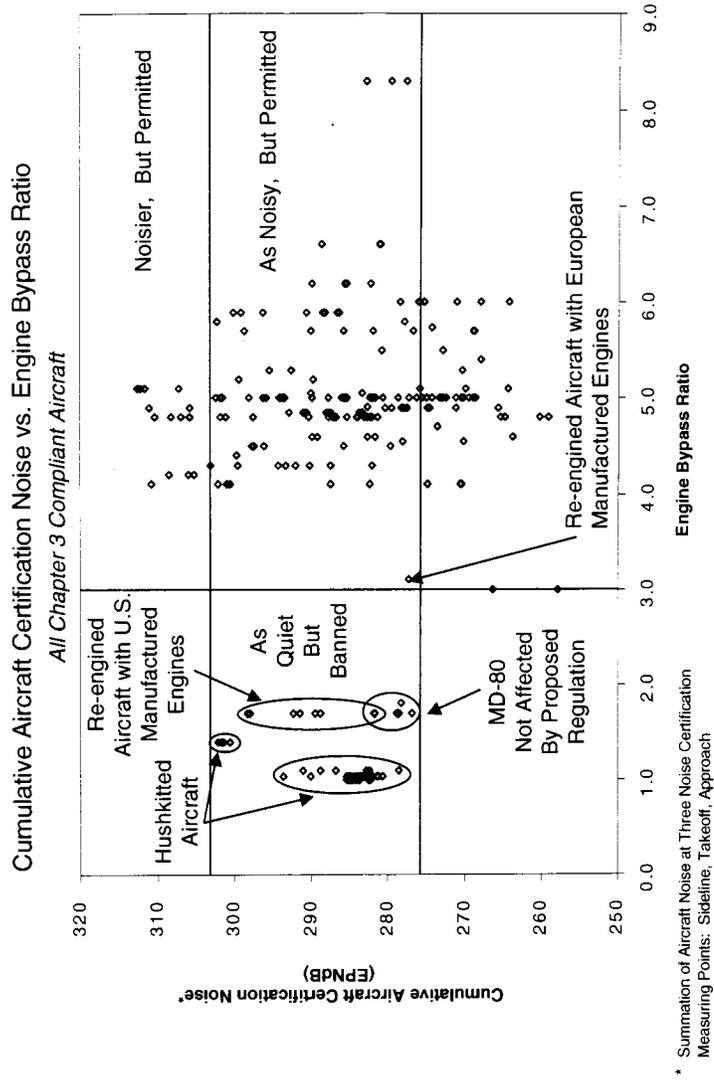
but of all standards agreed to on an international scale. The EU's arbitrary action has the effect of imposing a regionalized standard, in this case an unsupported regional noise standard, in direct conflict with a globally agreed upon standard.

Uniform international standards are essential to the health of not only the aviation industry but any industry. Uniform standards allow manufacturers and users to continue to invest significant amounts of money to develop and implement new technology for the industry in question. In this case, developing a regional noise standard has called into question ICAO's authority to set aircraft noise standards and has had a chilling effect on investment in this area, an effect that may carry over to other aviation areas.

It is important to note that, as drafted, the EU regulation affects U.S. manufactured products almost exclusively. The regulation relies on a design standard of by-pass ratio to distinguish which aircraft are restricted from use. This design standard prohibits the use of most U.S. engines and aircraft.

ICAO standards are performance based. They measure the volume of noise that an aircraft produces. It seems clear to the Committee that in order to combat aircraft noise, it would be more efficient and relevant to regulate noise based on performance and not design. In fact, as shown in the chart below, which was submitted as part of the Department of Commerce's testimony, the EU's design-based noise regulation would permit the operation of aircraft that are substantially noisier than the ones it seeks to restrict.

# Discriminating Between Aircraft on the Basis of Engine Bypass Ratio Bypass Ratio Is Not an Effective means of Reducing Noise



The Committee believes the regulation unfairly discriminates against U.S. aircraft and hushkit manufacturers. Development of hushkit technology is U.S.-based; essentially all hushkits are U.S. manufactured and the overwhelming majority of the business is conducted by U.S. companies. There are no European manufactured hushkitted aircraft. The regulation does not substantially affect European aircraft or aircraft engine manufacturers.

The regulation is estimated to cost the U.S. aviation industry almost \$2 billion. In addition to the costs of new planes and decreased fleet value, it will increase the cost of aircraft financing significantly, as financial institutions realize that the certification process can not be relied on to establish aircraft life expectancy.

The EU regulation will adversely affect the fleet value of aircraft modified either by adding hushkits or re-engining to meet ICAO Chapter 4 noise rules. The rule would artificially and dramatically limit the pool of possible buyers of U.S.-owned hushkitted aircraft because EU operators can no longer buy these aircraft from non-Europeans—only from other Europeans. Since these aircraft are no longer allowed to operate in Europe, the market value of the plane is depressed.

The regulation would significantly increase the cost of operating to, from, and within Europe—any new operations would have to use aircraft originally manufactured to meet Chapter 3 standards.

The European Union argues that it has deferred the implementation of this regulation and would consider delaying it further, contingent upon ICAO's movement towards Chapter 4 noise standards.

The Committee finds that the year long delay in implementation of the regulation has not abrogated its discriminatory effect on the U.S. aviation industry. At the September 9, 1999 Aviation Subcommittee hearing on this issue, the Subcommittee heard testimony of the effect of this regulation. Hushkit orders have decreased significantly; aircraft financing has become difficult to obtain for the targeted aircraft; and the aviation industry is predicting significant losses in the sales of engines and spare parts. Any further deferral will have the same effect as implementation on the U.S. aviation industry and only serve to exacerbate their current situation.

The Committee believes that any further significant delay in the rescission of this regulation will have a similar chilling effect on the industry as the one described above. If this regulation is not rescinded shortly, the U.S. Government should take all immediate and appropriate steps to use other avenues to pressure the European Union into rescinding this regulation that is clearly targeted at U.S. aviation industries and significantly discriminates against their products.

#### REPORTED RESOLUTION

The reported resolution indicates the Sense of Congress that the European Council Regulation No. 925/1999 that would restrict the use of hushkitted and re-engined aircraft in the EU, should be rescinded at the earliest possible date. If this regulation is not rescinded, then the U.S. Government should take all appropriate and immediate action to effect the filing of a petition with ICAO pursuant to Article 84 of the Chicago Convention.

In addition, the U.S. Government should continue to use all reasonable means available to ensure that the regulation is rescinded.

#### HEARINGS AND LEGISLATIVE HISTORY

H. Con. Res. 187 was introduced on September 22, 1999. The Aviation Subcommittee held a hearing on this issue on September 9, 1999. Testimony was received from the Departments of State, Transportation and Commerce as well as U.S. aviation industry interests.

#### COMMITTEE CONSIDERATION

On September 23, 1999 the Committee on Transportation and Infrastructure met in open session and ordered the bill reported, without an amendment, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H. Con. Res. 187.

#### ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H. Con. Res. 187 reported. A motion by Mr. Duncan to order H. Con. Res. 187 favorably reported to the House, without amendment, was agreed to by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

#### COST OF THE LEGISLATION

Clause 3(d) 2 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

#### COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H. Con. Res. 187.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the

Congressional Budget Act of 1974, the Committee has received the following cost estimate for H. Con. Res. 187 from the Director of the Congressional Budget Office.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 23, 1999.*

Hon. BUD SHUSTER,  
*Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H. Con. Res. 187, a concurrent resolution expressing the sense of Congress regarding the European Council noise rule affecting hushkitted and re-engined aircraft.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria Heid Hall.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*H. Con. Res. 187—A concurrent resolution expressing the sense of Congress regarding the European Council noise rule affecting hushkitted and re-engined aircraft*

CBO estimates that enacting H. Con. Res. 187 would have no impact on the federal budget. Because the resolution would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The Unfunded Mandates Reform Act does not apply to concurrent resolutions.

H. Con. Res. 187 would express the sense of the Congress that if a European Council regulation that bans certain aircraft from operating within Europe is not rescinded, then the Secretary of Transportation should file a petition regarding the regulation with the International Civil Aviation Organization. In addition, the resolution would call on the Secretaries of Commerce, State, and Transportation, and other appropriate parties to use all reasonable means available to them to ensure that the goal of having this regulation rescinded is achieved.

The CBO staff contact is Victoria Heid Hall. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Of-

vice pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under Article I, Section 8 of the Constitution.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.