

**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
CODES**

ARTICLE 9 - SAN DIEGO INTERNATIONAL AIRPORT
PART 9.4 - AIRFIELD OPERATIONS
SECTION 9.40 - AIRPORT USE REGULATION AT SAN DIEGO INTERNATIONAL AIRPORT

(a) Overview. This Section 9.40 sets forth the regulations of the San Diego County Regional Airport Authority (the “**Authority**”) restricting and regulating the use of the San Diego International Airport (the “**Airport**”) by certain types of aircraft, and restricting the use of the Airport during certain times of the day. The Authority is the certificated operator of the Airport. This Section 9.40 is a continuation of preexisting regulations governing the Airport originally adopted by the Board of Port Commissioners of the San Diego Unified Port District (the “**Port**”) on June 5, 1979, and Airport Regulations adopted by Port Resolutions 85-201, 87-206, and 87-207, as first adopted in a comprehensive form in 1988. These regulations continue to be supplemental to, and not in replacement of, any other duly adopted or authorized rules, policies, regulations and ordinances governing the use of the Airport.

(b) Background. This Section 9.40 restates and continues in effect the preexisting “Amended Airport Use Regulations” first adopted in a comprehensive form in 1988 by the Board of the Port, the then owner and operator of the Airport, and the predecessor in interest to the Authority. This Section 9.40 is adopted by the Authority in furtherance of, and consistent with, the transfer of the Airport from the Port to the Authority, as provided in the San Diego County Regional Airport Authority Act. This transfer occurred on January 1, 2003.

This Section 9.40 reflects that the Authority is vested with enforcement authority consistent with the transfer of title and ownership of the Airport to the Authority pursuant to California Public Utilities Code §§170056 and 170062, maintaining those substantive portions of the preexisting regulations governing the Airport originally adopted by the Port that are still relevant and deleting now irrelevant material. This Section 9.40 modifies the preexisting regulations governing the Airport originally adopted by the Port in a manner that does not reduce or limit aircraft operations or affect aircraft safety.

(c) Effective Date. This Section 9.40 restates the provisions of the preexisting Airport Use Regulations governing the Airport, which became effective on January 1, 1989, except for the provisions of subsections (f)(1)(B) and (f)(2)(B) of this Section 9.40 which prohibit certain departures between 6:30 and 7:00 a.m., and which prohibit publication of certain gate departure times between 9:45 p.m. and 6:45 a.m., respectively. Subsections (f)(1)(B) and (f)(2)(B) became effective April 1, 1989.

(d) Definitions. As used in this Section 9.40, the terms set forth below shall be deemed to have the following meanings:

(1) **“Engine Run-Up”** shall mean the operation of one or more aircraft engines at the Airport for the purpose of, or in connection with, testing, servicing or repairing an aircraft and its subsystems, including, but not limited to, any of its engines.

(2) **“FAA”** shall mean the Federal Aviation Administration of the United States Department of Transportation, and any successor federal agency.

(3) **“Gate Departure Time”** for Regularly Scheduled Commercial Operators shall mean: (i) for passenger carrying operators, the published departure time of any regularly scheduled commercial air carrier operation at the Airport; and (ii) for all-cargo operators, the time at which the aircraft conducting a departure from the Airport is scheduled by such air-cargo operator to receive permission from the FAA Ground Control facility at the Airport (or other comparable FAA tower function) to enter the system of taxiways and runways at the Airport in preparation for departure from the Airport.

(4) **“Limited Operations Hours”** shall mean the period each day between 6:30 a.m. and 7:00 a.m. (0630 to 0700 hours), and the period between 10:00 p.m. and 11:30 p.m. (2200 to 2330 hours) (local time).

(5) **“Person”** shall mean one or more human beings, legal entities or other artificial persons, including, without limitation, any airline, association, partnership, business trust, corporation, estate, or other legal entity, and any combination of human beings, legal entities or both.

(6) **“Regularly Scheduled Commercial Operator”** shall mean:

(A) **Passenger Operations.** Any Person engaged in scheduled passenger carrying operations at the Airport with aircraft operating at gross weights of 75,000 or more pounds and: (i) with four (4) or more departures during any weekly period which are published or listed in the Official Airline Guide, or advertised by any other means, as being available to the general public upon the payment of an established fare(s); or (ii) which have entered into contracts with any Person or group of Persons to conduct passenger carrying operations to or from the Airport which result in four (4) or more departures per week during any three (3) weeks of any calendar quarter; and

(B) **Cargo Operations.** Any Person operating aircraft at the Airport at gross weights of 75,000 pounds or more for purposes of carrying cargo to or from the Airport, and which operate four (4) or more departures per week at the Airport during any three (3) weeks of any calendar quarter.

(7) **“Stage 3 Aircraft”** shall mean an aircraft that meets at least one of the definitions of the following subsections:

(A) **Certificated Aircraft.** For aircraft which have been certificated under Federal Aviation Regulation (“FAR”) Part 36, an aircraft which, at the time of its manufacture, or, if modified, subsequent to its modification, has been formally and officially certificated by FAA as a “Stage 3 airplane” within the meaning of Section 36.1(f)(6) of FAR Part 36 (14 C.F.R. {36.1(f)(6) [1987]}).

(B) **Uncertificated Aircraft.** For aircraft not certificated by FAA under FAR Part 36, an aircraft which is identified under FAA Advisory Circulars (“ACs”) AC36-2C and/or AC36-3G (as in effect as of the date of adoption of this Section 9.40, and as later may be amended, revised or replaced by superseding ACs) as generating noise levels at the FAR Part 36 take-off measuring point of 89 dB EPNdB or less.

(C) **Non-Stage 3 Certificated Aircraft.** For aircraft which are certificated by the FAA under FAR Part 36, but which have not been certificated as a Stage 3 Aircraft, an aircraft that has been expressly certificated by the Authority’s Executive Director or his or her designee (the “**Executive Director**”) under Section 9.40(i) to be a “Stage 3 Aircraft” for purposes of this Section 9.40.

(e) Prohibition Against Certain Aircraft Types. No Person shall operate any aircraft at the Airport which generates more than 104 EPNdB under FAR Part 36 test procedures, as measured at the FAR Part 36 takeoff measuring point (6500 meters from brake release). For purposes of this Section 9.40, the values listed in FAA AC 36-2C (for uncertificated aircraft) under the column entitled “Take-off M/Est. EPNdB” and under applicable FAR Part 36 test procedures (for certificated and international aircraft) (as in effect as of the date of adoption of this Section 9.40, and as later may be amended, revised or replaced by superseding ACs), in the section “Noise Levels - EPNdB”, under the column headed “Take-off” shall be conclusive with respect to any aircraft listed in any such AC. See also FAR Part 36 (14 C.F.R. {36.1(f)(6) [1987]}).

(f) Time of Day Restrictions.

(1) Nighttime Departures.

(A) All Aircraft. No Person shall operate any aircraft on departure from the Airport between 11:30 p.m. and 6:30 a.m. (2330 and 0630 hours) (local time).

(B) Non-Stage 3 Aircraft. No Person shall operate any aircraft on departure from the Airport between 10:00 p.m. and 11:30 p.m. (2200 to 2330 hours), or between 6:30 a.m. and 7:00 a.m. (0630 to 0700 hours) (local time) unless such aircraft is a Stage 3 Aircraft.

(2) Scheduled Gate Departure Times.

(A) Stage 3 Aircraft. No Person shall schedule, or advertise for departure, a Gate Departure Time for any Stage 3 Aircraft between 11:15 p.m. and 6:15 a.m. (2315 and 0615 hours) (local time). The provisions of this Section 9.40(f)(2) do not modify the restrictions of Sections 9.40(f)(1)(A) or (B).

(B) Non-Stage 3 Aircraft. No Person shall schedule, or advertise for departure, a Gate Departure Time for any non-Stage 3 Aircraft between 9:45 p.m. and 6:45 a.m. (2145 and 0645 hours) (local time).

(3) Engine Run-Ups. No Person shall perform any Engine Run-Up at a power setting above idle power between 11:30 p.m. and 6:30 a.m. (2330 and 0630 hours) (local time).

(4) Exceptions.

(A) Emergency and Mercy Flights. The prohibitions of Section 9.40(f)(1) shall not be applicable to any aircraft operation at the Airport that is conducted in an emergency situation or to any mercy flight authorized in advance by the Executive Director or senior Airport official on duty (collectively, an “**Emergency or Mercy Flight**”).

(B) Engine Run-Ups. The prohibition of Section 9.40(f)(3) shall not be applicable to an Engine Run-Up necessary to allow an aircraft engaged in an Emergency or Mercy Flight to comply with any safety, legal or regulatory obligations or requirements prior to commencing the Emergency or Mercy Flight.

(g) Minimum Operations Mix Requirements.

(1) Semi-Annual Reporting Requirements.

(A) Form 41. Not later than March 31 of each year, beginning March 31, 1989, each Regularly Scheduled Commercial Operator shall file with the Clerk of the Authority a true and correct copy of its report to the United States Department of Transportation (“**DOT**”), for the preceding calendar year, of the Regularly Scheduled Commercial Operator’s DOT RSPA Form 41, Schedule B-43. Not later than January 21 and July 21 of each year, beginning January 21, 1989, each Regularly Scheduled Commercial Operator also shall file with the Clerk of the Authority a report or schedule which accurately identifies the number of airplanes of each separate aircraft type and model operated by the Regularly Scheduled Commercial Operator as of the preceding January 1 or July 1, respectively.

(B) Supplemental Information. With respect to the semi-annual reports required by Section 9.40(g)(1)(A), and the required filing of a copy of the Form 41, Schedule B-43, the Regularly Scheduled Commercial Operator also shall: (i) make entries (and appropriate and legible annotations to each aircraft entry on Schedule B-43) which describe the aircraft’s certificated “Stage” classification under FAR Part 36; (ii) provide a separate list or schedule of each aircraft which the Regularly Scheduled Commercial Operator has ordered, and for which he has received a scheduled delivery date from the aircraft manufacturer, and the expected delivery of each such aircraft; and (iii) provide a separate list or schedule of each aircraft which the Regularly Scheduled Commercial Operator expects to remove from its service during the following three (3) year period. The supplemental list of aircraft to be removed from service shall state the date on which the air carrier expects to remove each such aircraft from its service.

(C) Form 41 Substitute. Any Regularly Scheduled Commercial Operator not required by federal law or regulations to file a Form 41, Schedule B-43, shall comply with Sections 9.40(g)(1)(A) and (B) by filing with the Clerk of the Authority a substitute schedule containing all information required by Form 41, Schedule B-43, and the supplemental information required by Section 9.40(g)(1)(B).

(D) Form 41 Replacement. The Authority may prepare and make available forms, including forms in replacement of Form 41, Schedule B-43, to be used for purposes of Sections 9.40(g)(1)(A) and (B). If the Authority prepares such replacement form(s), they shall be used for purposes of complying with Sections 9.40(g)(1)(A), (B) and (C).

(E) Monthly Reporting Requirements. Not later than the 21st day of each month, each Regularly Scheduled Commercial Operator shall file with the Airport Noise Information Office at the Airport a schedule that reflects the number of landings for each type and model of that Regularly Scheduled Commercial Operator's aircraft that landed at the Airport in the preceding month. A copy of the Authority form which is used for reporting landing fees to the Authority, may be used for purposes of complying with this Section 9.40(g)(1)(E).

(2) No Regularly Scheduled Operator shall conduct operations at the Airport with aircraft that are not Stage 3 Aircraft.

(3) Violation of Section 9.40(g)(2) may, at the discretion of the Authority, and in addition to any and all other remedies available to the Authority, result in the imposition of administrative penalties and termination of all future operation privileges of the Person pursuant to Section 9.40(h)(4).

(h) Administrative Penalties. In addition to any and all other remedies which may be available to the Authority in respect of any violation of this Section 9.40, any Person which violates this Section 9.40 shall be subject to the following civil penalties:

(1) Violations of Section 9.40(e). In the event of any violation of Section 9.40(e), the Person(s) committing such violation shall be assessed a penalty of Ten Thousand Dollars (\$10,000), and all the Airport operating privileges of any such Person(s) shall be terminated.

(2) Violation of Section 9.40(f).

(A) In the event of the first violation of any provision of Section 9.40(f) during any calendar six month period, the Person(s) committing the violation each may be assessed Two Thousand Dollars (\$2,000) as a condition to the privilege of engaging in any further operations at the Airport.

(B) In the event of a second violation of Section 9.40(f) during any calendar six month period, the Person(s) committing the second violation may each be assessed Six Thousand Dollars (\$6,000) as a condition to the privilege of engaging in any further operations at the Airport.

(C) In the event of a third violation of Section 9.40(f) during any calendar six month period, the Person(s) committing the third violation each may be assessed Ten Thousand Dollars (\$10,000) as a condition to the privilege of engaging in any further operations at the Airport. Also, each penalized violation of these Regulations shall be influenced by violations in the previous calendar six months, such that penalized violations in one period shall cause a doubling of the fines in the subsequent six month period. In addition, the operating privileges of any such Person at the Airport may be terminated, or limited, on such terms and conditions, and for such period of time, as the Authority's Board (the "**Board**"), after notice and opportunity to be heard, determines is appropriate under the circumstances.

(3) Violations of Section 9.40(g)(1). Any Person failing to file with the Authority the reports required by Section 9.40(g)(1) by the date such reports are due may be assessed Five Hundred Dollars (\$500) for each day such reports are late. If the required reports are not filed within thirty (30) days of the date on which they would be due under Section 9.40(g)(1), the Person failing to file the required report(s) may be assessed One Thousand Dollars (\$1,000) for each succeeding day until the required report(s) are filed, and the operating privileges of any such Person at the Airport may be terminated, or limited, on such terms and conditions, and for such period of time, as the Board, after notice and opportunity to be heard, determines is appropriate under the circumstances.

(4) Violations of Section 9.40(g)(2). Any Person(s) violating Section 9.40(g)(2) may be assessed Ten Thousand Dollars (\$10,000) for each violation. In addition, the operating privileges of any such Person(s) at the Airport may be terminated, or limited, on such terms and conditions, and for such period of time, as the Board, after notice and opportunity to be heard, determines is appropriate under the circumstances.

(i) Aircraft Qualification Procedures.

(1) Opportunity for Qualification. Any Person wishing to use an aircraft in regular service at the Airport which is not certificated as a Stage 3 Aircraft by the FAA, but which the requesting Person believes has been modified in a manner which permits the aircraft to operate regularly at the Airport at or below Stage 3 noise levels, may request special certification by the Authority. The request shall be a request for a determination by the Authority that the aircraft is a Stage 3 Aircraft within the meaning of Section 9.40(d)(7)(C).

(2) Application Procedures. Any Person requesting Authority certification of an aircraft under Section 9.40(i)(1) shall submit a written request for such certification to the Executive Director. The written request shall be accompanied by all information available to the Regularly Scheduled Commercial Operator regarding the noise performance characteristics of the aircraft for which certification has been requested.

(3) Aircraft Testing Procedures. The Executive Director (and the Deputy Director, Airport Noise Mitigation with the approval of the Executive Director), shall establish appropriate testing procedures affording any Person making a request for Authority certification under Section 9.40(i)(1) to demonstrate to the satisfaction of the Authority that the aircraft for which an Authority certification request has been made can operate at the Airport as a Stage 3 Aircraft within the meaning of Section 9.40(d)(7)(A).

(4) Certification Action. The Deputy Director, Airport Noise Mitigation, shall report the results of any test conducted pursuant to Section 9.40(i)(3) to the Executive Director, who shall then act promptly to approve or deny the request for certification. In granting any Authority certification of an aircraft as a Stage 3 Aircraft within the meaning of Section 9.40(d)(7)(A), the Executive Director may impose such conditions as he deems to be appropriate and consistent with the provisions, policies and intent of this Section 9.40.

(j) Partial Invalidity. In the event any court of competent jurisdiction determines that any portion or provision of this Section 9.40 is invalid, illegal or unenforceable, or temporarily enjoins enforcement or application of any provision of this Section 9.40, all other provisions of this Section 9.40 shall remain enforceable and in effect unless and until revoked, suspended or modified by the Board; and all obligations of any Person under any provision of this Section 9.40 not affected by any such court ruling or order shall remain in full force and effect.

(k) No Waiver or Implied Policy. Specific actions taken in respect of the enforcement of this Section 9.40 are within the discretion of the Authority. Any failure by the Authority to take any act or action in strict enforcement of this Section 9.40, inadvertent or otherwise, or any affirmative waiver of enforcement by the Authority in a specific instance after consideration of any special request or circumstances, shall not constitute the establishment of any express or implied policy of the Authority in respect of the enforcement of this Section 9.40, and shall not be relied on by any Person in making any determination, or taking any action, to violate any provision of this Section 9.40.

[Resolution No. 03027 dated March 1, 2003.]

[Superseded by Resolution No. 2006-0040 dated April 3, 2006.]