

Nos. 16-1377, 16-1378, 17-1010, 17-1028 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DONALD VAUGHN, *et al.*,
Petitioners

v.

FEDERAL AVIATION ADMINISTRATION, *et al.*,
Respondents

ON PETITION FOR REVIEW OF AN ORDER OF THE
FEDERAL AVIATION ADMINISTRATION

BRIEF OF FEDERAL RESPONDENTS

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CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

A. Parties, Intervenors, and Amici

City of Culver City, California
Santa Monica Canyon Civic Association
Donald Vaughn
Stephen Murray
Petitioners

United States Department of Transportation
Federal Aviation Administration (“FAA”)
Daniel K. Elwell, Acting Administrator of the FAA
Elaine L. Chao, Secretary of Transportation
Respondents

City of Los Angeles, California
West Adams for Clear Skies
Amici

B. Ruling Under Review

Petitioners seek review in this Court of the FAA’s Finding of No Significant Impact and Record of Decision for the Southern California Metroplex Project, published on September 2, 2016.

C. Related Cases

There are currently no related cases pending before this Court, as defined by D.C. Cir. R. 28(a)(1)(C).

GLOSSARY

Average Annualized Day/Night Noise Level	DNL
California Noise Equivalent Level	CNEL
Environmental Protection Agency	EPA
Federal Aviation Administration	FAA
Los Angeles International Airport	LAX
National Environmental Policy Act	NEPA

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INTRODUCTION

In 2016, the Federal Aviation Administration (“FAA”) approved the Southern California Metroplex Project (“Project”), a major undertaking to redesign the air-traffic control procedures at Los Angeles International Airport (“LAX”) and twenty surrounding airports. AR 1-A-1, JA ___ - ___. After years of environmental review and consideration of extensive public comments, FAA concluded that the Project would not significantly affect the human environment as defined by the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4332(C). FAA also determined that further analysis under the Clean Air Act, 42 U.S.C. § 7506, was not required, applying a regulatory exemption designed specifically afforded to new air-traffic control procedures.

Petitioners are the City of Culver City, two individuals, and the Santa Monica Canyon Civic Association (a voluntary-membership neighborhood organization). Each filed separate petitions for review of FAA’s decision, which were consolidated into a single proceeding by this Court. Petitioners object to FAA’s environmental analysis, alleging violations of both NEPA and the Clean Air Act.

STATEMENT OF JURISDICTION

FAA issued a Record of Decision and Finding of No Significant Impact on September 2, 2016, approving the Southern California Metroplex Project. Petitioner Benedict Hills Estates Association petitioned for review of that order in this Court on October 24, 2016. D.C. Cir. No. 16-1366. Other parties subsequently petitioned for review

of the same order, some in this Court and some in the Ninth Circuit. The Ninth Circuit petitions were transferred to this Court and consolidated with case number 16-1366 under the automatic transfer provisions of 28 U.S.C. §§ 2112(a)(1) & (5).

Petitioners invoked the jurisdictional provision of 49 U.S.C. § 46110(a), allowing for initial judicial review in the federal courts of appeals of an “order” of the FAA Administrator. Of the nine original petitions for review, five (including No. 16-1366) were voluntarily dismissed. The four Petitioners now remaining before this Court all filed their petitions for review within the 60-day statute of limitations established by 49 U.S.C. § 46110(a). As explained in Argument Section I of this brief, however, this Court lacks jurisdiction over the petitions for review filed by Culver City (No. 17-1010) and the Santa Monica Canyon Civic Association (No. 16-1378). Those two petitions for review should be dismissed for lack of jurisdiction.

STATUTES AND REGULATIONS

Most applicable statutes and regulations are contained in the separate Statutory Addendum filed with Petitioners’ Opening Brief. Additional references are attached to this brief in the Respondents’ Statutory Addendum.

STATEMENT OF THE ISSUES

1. Does the City of Culver City have standing in this Court when it seeks only to redress alleged procedural injuries sustained by its citizens rather than by the City itself?

2. Does this Court lack jurisdiction under 49 U.S.C. § 46110(d) over the petition for review filed by Santa Monica Canyon Civic Association, when that Petitioner did not participate in the public comment period during the NEPA process?
3. Does FAA have a statutory duty to reduce overall aircraft noise when revising or creating air-traffic control procedures intended to enhance the efficiency and safety of the national airspace?
4. Does substantial evidence in the record support FAA's conclusion that the Southern California Metroplex Project would have no significant impacts on the human environment requiring preparation of an environmental impact statement under NEPA, 42 U.S.C. § 4332(C)?
 - a. Did FAA reasonably identify the purpose and need of the Project and consider a reasonable range of alternatives?
 - b. Did FAA use an appropriate computerized noise model and an appropriate metric to forecast potential impacts from aircraft noise?
 - c. Did FAA reasonably consider the cumulative impacts of the Project?
 - d. Did FAA reasonably consider the potential impacts of greenhouse-gas emissions from the Project?
5. Did FAA appropriately conclude that a "conformity determination" was not required by the Clean Air Act, 42 U.S.C. § 7506(c)(1), because FAA's published list of activities exempt from this requirement includes the types of air-traffic procedures approved by this Project?

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

A. The Federal Aviation Act

The Federal Aviation Act of 1958, 49 U.S.C. § 40101 et seq., delegated to FAA control over the use of the nation's navigable airspace and regulation of domestic civil and military aircraft operations to ensure that such operations are safe and efficient. *See, e.g., id.* § 40101(d)(4). Congress authorized FAA to prescribe rules and regulations governing the flight and navigation of aircraft, and to ensure the efficient utilization of navigable airspace. *Id.* § 40103(b)(2).

Pursuant to this authority, FAA publishes air-traffic control procedures for use by aircraft operating at airports in the United States. FAA is currently transitioning the national airspace from conventional procedures using ground-based navigation aids to procedures that take advantage of newer technologies such as the Global Positioning System and automated navigation guidance systems found in more modern aircraft. The expeditious implementation of this Next-Generation Air Transportation System, which FAA calls "NextGen," is a congressional priority. *See, e.g.,* FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 213(a)(1)(A), 126 Stat. 11, 47 (requiring the FAA "to maximize the fuel efficiency and airspace capacity" of the nation's 35 busiest airports by implementing NextGen procedures within three years).¹

¹ A good primer on "NextGen" procedures can be found in the Final Environmental Assessment. AR 1-B-1 at 1-4 to 1-13, JA ____ - ____.

B. The National Environmental Policy Act

NEPA, 42 U.S.C. § 4321 *et seq.*, is a procedural statute designed to foster better and more-informed decision-making by federal agencies. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). NEPA requires an agency to prepare an “environmental impact statement” before a federal agency may engage in “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). But not all agency actions have such an effect. To determine whether significant environmental effects are expected, an agency may prepare a “concise public document” known as an “environmental assessment” to “briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9; *see also id.* §§ 1501.3, 1501.4(b), 1508.13. If the agency ultimately determines that the environmental impacts of its proposed action will not be significant as defined by regulation, it may issue a Finding of No Significant Impact and a decision authorizing the action. This concludes the NEPA process. *Id.* §§ 1508.9, 1508.13.

C. The Clean Air Act

The Clean Air Act establishes a joint federal-and-state program to control air pollution by setting national ambient air quality standards. *See* 42 U.S.C. § 7409. The Environmental Protection Agency (“EPA”) must set these standards for certain identified pollutants. *Id.*

For each such pollutant identified by the Clean Air Act, each state must adopt and submit to the EPA a “state implementation plan” providing for implementation, maintenance, and enforcement of the

relevant air quality standard. 42 U.S.C. § 7410. Each state must submit to the EPA a list of all areas within the state that do not meet those standards: these are known as “nonattainment” areas. *Id.*

§ 7407(d)(1)(A)(i).

The Clean Air Act prohibits federal agencies from approving or funding “any activity which does not conform” to a state implementation plan. *Id.* § 7506(c)(1). This requirement generally means that the anticipated emissions from a proposed activity must not frustrate the implementation plan’s goal of attaining a national ambient air quality standard. *Id.* § 7506(c)(1)(A)-(B). EPA regulations require that federal agencies “make a determination” that their actions will conform to applicable state implementation plans before they act. 40 C.F.R. § 93.150(b). However, a formal “conformity determination” is not required for every federal action. EPA regulations define broad categories of federal actions that are exempt from the conformity-determination requirement on the theory that any resulting increases in emissions would clearly be *de minimis*. *Id.* § 93.153(c)(2). In addition, those regulations permit federal agencies to identify their own list of actions “presumed to conform” to state implementation plans, as long as those actions meet certain specified requirements. *Id.* § 93.153(f).

FAA has published just such a list. AR 9-D-6, JA ___-___; *see also County of Delaware, Pa. v. Dep’t of Transp.*, 554 F.3d 143 (D.C. Cir. 2009). On that list are all “Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations.” AR D-9-6 at 41,569, JA ___. When it published the list in the Federal Register, FAA explained that, in this context, “air traffic control activities are defined as actions that promote the safe, orderly, and

expeditious flow of aircraft traffic.” *Id.* at 41,578, JA _____. Any air-traffic control procedures that “are designed to enhance operational efficiency” or “increase fuel efficiency” are presumed to conform to any applicable state implementation plan, *id.*, and no further analysis of those procedures is required by the Clean Air Act.

II. The Southern California Metroplex Project

In 2009, FAA convened a working group of more than 300 representatives of aviation-industry and government-agency stakeholders, to assess the nationwide transition to NextGen and to recommend next steps. AR 9-B-4, JA _____. Among the recommendations was the need to implement NextGen procedures on a regional scale around the nation’s busiest airports, identifying Southern California as one of the regions of greatest need. AR 9-B-2 at 14-15, JA ____-____; AR 1-B-1 at 1-2 to 1-3, JA ____-____. Accordingly, in 2011 FAA convened a study team to provide the preliminary scope and parameters of a Southern California Metroplex Project. AR 4-B-1 at 1-4, JA ____-____. The study area identified for the Project included most of nine counties, from Santa Barbara south to the Mexican border. AR 1-B-1 at Exh. 4-1, JA _____. This area included 21 airports at which procedures would be revised or replaced with NextGen procedures. *Id.* These airports used a combined total of 96 procedures in 2012, only 23 of which were modern performance-based navigation procedures. AR 1-B-1 at 2-1, JA _____.

FAA designed the Project to improve the efficiency and safety of the airspace in the Southern California region through use of NextGen procedures. Transitioning this region to these procedures enhances operational efficiency in several respects. NextGen procedures establish

predetermined altitudes and speeds, which reduces the need for interaction between pilots and controllers. *Id.* Reducing this complexity in turn reduces the chance for error or miscommunication and otherwise improves the safety of the system. NextGen procedures are more predictable and precise, ensuring better separation between aircraft. *Id.* The current procedures in use in the area frequently did not work as intended, causing delays and requiring additional intervention by air-traffic controllers. *Id.* at 2-2, JA ____.

After several years of design and environmental review, FAA circulated a draft Environmental Assessment in 2015. *Id.* at 2-18, JA _____. The original 30-day period for public comment was extended an extra 90 days due to substantial public interest. *Id.* During the public comment period, FAA conducted public workshops in 11 different locations. *Id.* at 2-19, JA _____. FAA also conducted 33 briefings for airport officials and elected representatives. *Id.* FAA modified and adjusted several of the proposed procedures in response to concerns raised during the public comment period.

Because the public comment period was extended, the implementation date changed and the noise forecasts for future anticipated noise impacts had to be updated. AR 1-B-1 at 3-37, JA _____. FAA found some small changes to anticipated noise impacts and adjusted the procedures in response. *Id.* FAA also evaluated whether additional changes could be made to address concerns about noise while continuing to fulfill the purpose and need of the Project. *See* AR 3-A-8, JA ____ (White Paper detailing the results of that evaluation). FAA moved a waypoint (designated as “CLIFY”), which allowed FAA to raise the altitude of aircraft arriving into LAX, reducing noise and emissions

impacts in the nearby area. AR 1-B-1 at 3-38, JA _____. FAA also created a new procedure for downwind north arrivals into LAX (areas of concern to Petitioners) to be used for late night and early morning arrivals, raising the altitude and thereby reducing noise overnight. AR 1-B-1 at 3-42, JA ____; AR 3-A-8 at 12-14, JA ____-____. Several other adjustments were made where possible within the Metroplex in response to public comments.²

On September 2, 2016, FAA published its Final Environmental Assessment, Record of Decision and Finding of No Significant Impact. AR 1-A-1, JA ____; AR 1-B-1, JA _____. The Record of Decision approved the Project, consisting of over 150 different NextGen procedures for use at the 21 airports within the study area. It documents “FAA’s finding that the SoCal Metroplex Project will not have significant environmental impacts and explains the basis for that decision.” AR 1-A-1 at 2, JA _____. After extensive noise analysis discussed in the Final Environmental Assessment, FAA concluded that there would be no increases in noise above the agency’s clearly-established significance thresholds. *Id.* at 7-8, JA ____-____; *see also* 14 C.F.R. § 150.7, Part 150 App. A and B. FAA explained that air quality impacts were presumed by law to conform to California’s applicable state implementation plans, and that minimal increases in fuel consumption within the study area were not expected to violate air quality standards or delay their

² These included creation of a new waypoint near Point Loma to ensure that aircraft remain west and south of the peninsula over the water, rather than turning sooner across the peninsula when turning back towards their easterly destinations. AR 3-A-8 at 4-5, JA ____-____. This change addressed comments made by Kathryn Vaughn, wife of Petitioner Donald Vaughn. AR 1-B-14 at F-3147, JA _____.

implementation. AR 1-A-1 at 11, JA _____. FAA also considered potential impacts from greenhouse-gas emissions, although there are no federal standards for quantifying those impacts. *Id.* at 11-12, JA ____-____. FAA found that slight increases in carbon dioxide would have no significant impacts on the environment. *Id.*

After FAA approved the Project, Petitioners sought review in this Court. The approved NextGen procedures were implemented in the following months, and all new procedures approved by the Metroplex decision were in place as of May 2017.

SUMMARY OF ARGUMENT

FAA designed the Southern California Metroplex Project to improve the safety and operational efficiency of aircraft operations in the region, consistent with Congress's mandate that FAA pursue those twin aims in its exercise of authority over the national airspace. The Project was never intended to reduce aircraft noise, and designing the Project with noise reduction as a priority would have contradicted FAA's statutory mandate. Petitioners' attempt to cobble together a statutory obligation for FAA to reduce aircraft noise when it designs air-traffic procedures has no basis in the law. Nevertheless, FAA endeavored not to move aircraft out of historical flight tracks (where they have flown in the past), so that new neighborhoods would not experience increases in noise that meet well-established significance thresholds. FAA did so successfully, designing the Project so as to avoid even "reportable" impacts, meaning those that are not "significant" for NEPA purposes but still of a magnitude that FAA guidance requires the

public to be notified. Although Petitioners raise a litany of objections in their brief, they never seriously question this ultimate conclusion, which underpins FAA's entire environmental review of the Project. No significant impacts were found for noise, air quality, or any other environmental resource.

Two of the four Petitioners are not properly before this Court. Culver City appears solely in an attempt to redress the injuries of its citizens, but well-established law forecloses that attempt. Santa Monica Canyon Civic Association filed no comments and did not participate during the public-comment process, and it therefore fails to satisfy the statutory prerequisite of 49 U.S.C. § 46110(d) for proceeding before this Court on a petition for review. Accordingly, the petitions filed by these two parties must be dismissed.

On the merits, Petitioners fail to identify any error in FAA's comprehensive NEPA review. FAA's choice to use a particular computerized noise model (the Noise Screening Tool of the Noise Integrated Routing System) was explained in the administrative record and fully consistent with the agency's internal guidance. Nevertheless, FAA subsequently provided Petitioners with the relief they now seek from this Court, when FAA re-analyzed the Project using a newer computer model (the Aviation Environmental Design Tool). The results were the same: no significant noise impacts would occur anywhere in the study area.

FAA's use of its "DNL" metric to quantify noise impacts and determine their significance was reasonable, as federal regulations require noise to be reported using this metric and establish thresholds based on this metric. Petitioners would prefer use of a California-

specific noise metric (“CNEL”), but use of that metric is optional for FAA in fulfilling its NEPA obligations, and FAA reasonably opted not to apply it here.

The environmental assessment overlooked no reasonably foreseeable impacts. Petitioners identify only one future project contemplated by the City of Los Angeles, but FAA explained in the record why that project was not considered. Indeed, Amicus City of Los Angeles has informed this Court that this particular project is not reasonably foreseeable.

FAA also appropriately considered greenhouse gases, by quantifying their potential emissions as a result of the Project and disclosing those numbers in the NEPA documents. Guidance from the Council on Environmental Quality that was in effect at the time told agencies to use 25,000 metric tons of carbon dioxide as a rule of thumb for when emissions might be considered potentially significant. But this Project was anticipated to increase carbon dioxide emissions by only 42 metric tons, less than 0.2% of that threshold of concern.

Amici’s allegations that FAA violated the National Historic Preservation Act and the Executive Order requiring consideration of environmental-justice concerns are not before this Court because these issues were not raised in Petitioners’ opening brief. In any event, the allegations are baseless. FAA fully engaged with the public on potential impacts and found that none of those impacts was “significant” under NEPA, which means they are not potentially “adverse” under those other legal regimes.

Finally, FAA fully complied with the Clean Air Act when it relied on its own duly-promulgated exemption for air-traffic procedures

designed to enhance safety and efficiency. EPA regulations implementing the Clean Air Act authorize other agencies to publish exemptions, and the validity of FAA's exemption is not challenged here. Nothing further was required of FAA in this case.

The petitions for review should be denied on the merits.

ARGUMENT

I. Certain Petitioners and claims must be dismissed for lack of jurisdiction.

Before addressing the merits, this Court should remedy two significant jurisdictional defects. First, Culver City's petition must be dismissed because the City lacks standing to represent the interests of its citizens in this proceeding. Second, Santa Monica Canyon Civic Association's petition must be dismissed for failure to exhaust its available procedural and administrative remedies. These dismissals will not result in dismissal of the entire case, as at least one Petitioner (Stephen Murray) has demonstrated adequate standing to proceed. Pet. Addendum B at 1. But this Court may not exercise jurisdiction over a party not properly before it, and dismissing these parties would be potentially relevant should this Court conclude that Petitioners' claims have merit and that an appropriate remedy should be devised.

A. Culver City's petition for review must be dismissed for lack of standing.

A "state does not have standing as *parens patriae* to bring an action against the Federal Government" on behalf of its citizens. *West*

Virginia v. EPA, 362 F.3d 861, 868 (D.C. Cir. 2004) (internal quotation marks omitted). “As municipalities derive their existence from the state and function as political subdivisions of the state, presumably they too cannot sue the federal government under the doctrine of *parens patriae*.” *City of Olmsted Falls, OH v. FAA*, 292 F.3d 261, 268 (D.C. Cir. 2002). A city government may only establish standing to sue the federal government “when a harm to the city itself has been alleged.” *Id.*³ Culver City fails in its attempt to demonstrate that it seeks here to “redress its own injuries, *i.e.*, the injuries as ‘city qua city.’” Op. Br. at 19 (citing *City of Olmsted Falls*, 292 F.3d at 268). The injuries it alleges are either injuries to its citizens, or not injuries at all.

Culver City first alleges that the computerized noise model used by FAA in reviewing this Project “understates” potential noise impacts, which in turn impedes “Culver City’s responsibility to protect its citizens’ ‘health safety and welfare.’” Op. Br. at 19 (citing Culver City Municipal Code § 1.02.005). Culver City similarly states that FAA’s choice of this noise model affects the City’s compliance with state law requiring reduction in greenhouse gases and its compliance with its obligations under the Clean Air Act. Op. Br. at 20. But even assuming there were any merit to Culver City’s allegations, Culver City has failed to show any direct effect on its ability to fulfill its legal obligations as a municipal entity.

³ Culver City perfunctorily suggests that the *parens patriae* doctrine does not apply to it because it is organized as a “charter city” rather than as a “general law city.” Op. Br. at 19. Whatever the significance of this distinction for California law, Culver City provides no authority for excusing a “charter city” from the rule that cities, like states, may not sue the federal government under the doctrine of *parens patriae*.

The municipal and state laws that Culver City cites neither impose obligations on, nor grant authority to, the City respecting environmental impacts from aircraft operating in the national airspace. Therefore, FAA's actions in designing and approving the Project can have no effect on Culver City's non-existent legal authority. Any attempt by the City to impose restrictions or limitations on aircraft operations would be preempted by federal law, which grants that exclusive authority to the federal government. 49 U.S.C. § 40103(a) ("The United States Government has exclusive sovereignty of airspace of the United States"); 42 U.S.C. § 7573 (prohibiting all state and local regulation "respecting emissions of any air pollutant from any aircraft or engine thereof" unless the regulation is "identical" to federal regulations). Any reduction in the "health safety and welfare" of Culver City's citizens resulting from the Project is an injury sustained by those citizens, and not by the City, as such injury neither forces the City to act nor prevents it from acting in any way inconsistent with its own legal obligations. Culver City does not explain how *its* obligations to reduce greenhouse gases under state law (whatever those unspecified obligations may be) are affected by actions taken solely by the FAA without state or local involvement. Finally, the relevant Clean Air Act provisions require FAA, as a federal agency, to comply with the state implementation plans; the agency's actions have no legal effect on any separate decisions the City may make about how it will comply with those plans. *See infra* p. 54.

Culver City also suggests that it is harmed by a lack of information from FAA resulting from FAA's choosing a noise model different from the one that Culver City prefers. Op. Br. at 29-30. But

FAA provided Culver City with the results of a new analysis using the City's preferred model in 2017. *See infra* pp. 32-33. Any injury to the City from a lack of information was already remedied.

In sum, Culver City has sued the federal government based on a *parens patriae* relationship with its citizens, which is an impermissible basis for standing in federal court. *City of Olmsted Falls*, 292 F.3d at 268. Its petition for review (No. 17-1010) must be dismissed.

**B. Petitioner Santa Monica Canyon Civic Association
should be dismissed for failure to comment or
participate in the NEPA process.**

In the NEPA process, it is “incumbent” on parties who “wish to participate to structure their participation so it is meaningful, so that it alerts the agency” to their position. *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 U.S. 519, 553 (1978). The statute under which these Petitioners proceed “codifies the familiar requirement of exhaustion of administrative remedies.” *Continental Air Lines, Inc. v. Dep’t of Transp.*, 843 F.2d 1444, 1455 (D.C. Cir. 1988). Congress provided that when considering a petition for review of an FAA order, “the court may consider an objection . . . only if the objection was made in the proceeding conducted by the Secretary, Under Secretary, or Administrator [of FAA] or if there was a reasonable ground for not making the objection in the proceeding.” 49 U.S.C. § 46110(d). Parties may comply with these legal obligations, and therefore establish the necessary predicate to this Court’s jurisdiction over the party’s objections to FAA’s decision, by submitting detailed comments to the agency during the appropriate public comment period.

Petitioner Santa Monica Canyon Civic Association did not do so, and its petition for review must therefore be dismissed.

Santa Monica Canyon Civic Association did not submit *any* comments during the 120-day public comment period in the summer and fall of 2015. It did send a letter more than six months after the comment period had closed, and although it later met with FAA's Regional Administrator, it did not during that meeting raise the specific procedural injury issues discussed in the opening brief. Petitioners' opening brief is accompanied by declarations from six individuals, none of whom commented to FAA during the public comment period. This failure to participate before the agency deprives this Court of jurisdiction over Santa Monica Canyon Civic Associations' petition for review (No. 16-1378).

II. Standard of review of Petitioners' claims on the merits.

A. FAA's order is reviewed for arbitrary and capricious decisionmaking under the APA.

This Court reviews FAA's compliance with NEPA for arbitrary and capricious decision-making under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A). *Communities Against Runway Expansion v. FAA*, 355 F.3d 678, 685 (D.C. Cir. 2000). "The scope of review is narrow and a court is not to substitute its judgment for that of the agency, provided the agency has examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Airmotive Engineering Corp. v. FAA*, 882 F.3d 1157, 1159 (D.C. Cir. 2018)

(quoting *Motor Vehicle Manufacturers Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)) (alterations omitted). FAA's findings of fact "are conclusive" when "supported by substantial evidence," 49 U.S.C. § 46110(c), which is any "evidence as a reasonable mind might accept as adequate to support a conclusion." *Schoenbohm v. FCC*, 204 F.3d 243, 246 (D.C. Cir. 2000) (internal quotation marks omitted).

When reviewing FAA's environmental assessment and accompanying decision documents, this Court looks only to "ensure that the agency took a hard look at the environmental consequences of its decision to go forward with the project." *Communities Against Runway Expansion*, 355 F.3d at 685 (quoting *City of Grapevine v. Dep't of Transp.*, 17 F.3d 1502, 1503-04 (D.C. Cir. 1994)). It is "well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process." *Robertson*, 490 U.S. at 350.

This Court reviews FAA's compliance with the Clean Air Act under the same arbitrary and capricious standard of the APA. *City of Olmsted Falls*, 292 F.3d at 271. "Even assuming the FAA made missteps, the burden is on petitioners to demonstrate that the FAA's ultimate conclusions are unreasonable." *Id.* (alterations omitted) (quoting *National Petrochemical & Refiners Ass'n v. EPA*, 287 F.3d 1130, 1146 (D.C. Cir. 2002)).

B. This Court must defer to FAA's technical determinations.

The conclusions in FAA's Record of Decision are based on numerous technical determinations reproduced in the administrative record and explained in the Environmental Assessment. To the extent

that Petitioners challenge the substance of FAA's technical conclusions, this Court must defer to FAA's factual determinations so long as they are supported by substantial evidence in the administrative record. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 (1989). Indeed, when “examining this kind of scientific determination . . . a reviewing court must generally be at its *most* deferential.” *Id.* (emphasis added).

Aircraft noise is forecast and analyzed by the use of highly-sophisticated computer models. Courts “routinely defer to agency modeling of complex phenomena.” *West Virginia v. EPA*, 362 F.3d at 866-67 (internal quotation marks omitted). This Court must uphold the agency's resulting technical determinations so long as the assumptions of any modeling bear “a rational relationship to the real world.” *Id.* This Court has specifically acknowledged that FAA's use of the “DNL” metric, also known as the average annualized day/night noise level standard, is “the appropriate methodology for evaluating the impacts from aircraft noise.” *Town of Cave Creek v. FAA*, 325 F.3d 320, 328 (D.C. Cir. 2003).

This deference to the informed expert decision-making of a federal agency on technical matters is well-settled and uncontroversial. Petitioners, however, assert that “deference to FAA's technical determinations contravenes the most basic constitutional policy of the separation of powers.” Op. Br. at 42. As Petitioners correctly observe, deference to federal agencies' legal interpretations has sometimes been subject to critique based on concerns about the separation of powers. *Id.* But no such concerns are implicated here. Petitioners confuse deference to expert *factual* determinations with deference to an agency's *legal*

interpretation of ambiguous statutory provisions. Op. Br. at 42-45. FAA does not ask in this case for deference under *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837 (1984), because the case presents no issues of statutory or regulatory interpretation. The Supreme Court has clearly established that whether an agency has properly decided that environmental impacts are not “significant” under NEPA “is a classic example of a factual dispute the resolution of which implicates substantial agency expertise.” *Marsh*, 490 U.S. at 376. Judicial review of an agency’s finding of no significant impact does not require a legal interpretation of NEPA’s phrase “significantly affecting the human environment,” in 42 U.S.C. § 4332(C). *Marsh*. 490 U.S. at 376-77. Petitioners’ objections to *Chevron* deference and to related deference doctrines, Op. Br. at 45 (citing *United States v. Mead Corp.*, 533 U.S. 218, 228 (2001); *Skidmore v. Swift*, 323 U.S. 134, 140 (1944)), are irrelevant here and should be ignored.

III. FAA has no specific statutory duty to reduce aircraft noise when approving new air-traffic procedures.

Petitioners discuss at length FAA’s obligation to consider the “public interest.” Op. Br. at 35-41. Although the implications of this discussion are unclear, Petitioners appear to be suggesting that FAA has an ongoing statutory obligation to establish air-traffic procedures that reduce aircraft noise and emissions of air pollutants. *See, e.g., id.* at 38 (alleging that “FAA ignored one of its Congressionally mandated goals for NextGen” when it did not design “flight paths that would actually *reduce* exposure of noise and emissions pollution on affected residents”). No such obligation exists. FAA is required by NEPA to

evaluate and consider the potential impacts of noise and emissions resulting from its proposed actions, and it did so extensively in this case. But no statute requires FAA to prioritize reduction of environmental impacts in its design of the national airspace. To the contrary, numerous statutory provisions delegating authority to FAA make clear that the agency's primary concerns must be safety and efficiency.

A. Neither Congress nor this Court has ever imposed noise- and emissions-reduction requirements on FAA's design of new air-traffic procedures.

“The United States Government has exclusive sovereignty of airspace over the United States.” 49 U.S.C. § 40103(a). Congress has delegated to the FAA authority to “develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.” *Id.* § 40103(b)(1). When FAA assigns a segment of the national airspace for a particular use, it then “may modify or revoke an assignment when required in the public interest.” *Id.* § 40103(b)(1). But this provision, which refers specifically to “the safety of aircraft and the efficient use of airspace,” *id.* § 40103(b)(1), applies to the assignment of airspace and *not* to the design of air-traffic procedures within that airspace.

The subsequent sections of this provision grant authority to FAA to promulgate regulations governing use of the national airspace system. *Id.* § 40103(b)(2)(A)-(D). Among these, FAA “shall prescribe air traffic regulations . . . protecting individuals and property on the

ground.” *Id.* § 40103(b)(2)(B). FAA has previously interpreted this authority to permit it to establish air-traffic procedures for the purpose of reducing noise impacts on people on the ground. *Helicopter Ass’n Int’l v. FAA*, 722 F.3d 430, 434-35 (D.C. Cir. 2013). Petitioners read *Helicopter Association* to mean that FAA has “the duty to protect people on the ground from noise from aircraft.” Op. Br. at 36. But this Court held no such thing: it held that prioritizing noise was a permissible use of FAA’s delegated authority, in that instance. This Court acknowledged that this authority was “infrequently” used by FAA, identifying only three other instances in the last 50 years where FAA designed air-traffic procedures with the intention of reducing aircraft noise impacts. 722 F.3d at 437-38.

Petitioners turn next to the FAA authorization bill enacted in 2003, commonly referred to as “Vision 100.” Op. Br. at 37-38 (citing Pub. L. No. 108-176, 117 Stat. 2490 (2003)). But this statute does not support Petitioners’ argument. In pertinent part, the statute provides a list of “goals” for implementation of the Next Generation Air Transportation System (“NextGen”). *Id.* § 709(c). The first of these was that the new system “shall . . . improve the level of safety, security, efficiency, quality, and affordability of the National Airspace System and aviation services.” *Id.* § 709(c)(1), 117 Stat. at 2584. The last “goal” directs FAA to “take into consideration, to the greatest extent practicable, design of airport approach and departure flight paths to reduce exposure of noise and emissions pollution on affected residents.” *Id.* § 709(c)(7), 117 Stat. at 2584.

The statute makes clear that FAA *must* improve “safety, security, efficiency, quality, and affordability” of the national airspace as it

develops next-generation procedures. It also makes clear that competing concerns about noise and emissions pollution should influence design of those procedures only when it is practical to do so while still achieving mandatory goals. Vision 100 does not require that every new next-generation air-traffic procedure reduce noise and air pollution, and Petitioners have identified no other source of law that imposes such a requirement on FAA.

Petitioners ultimately seem to acknowledge this point, concluding that FAA's statutory obligations are only to take "into consideration" the extent to which noise and emissions pollution can be reduced. Op. Br. at 38. But contrary to Petitioners' claims, FAA *did* consider these issues in great detail during its environmental review of the Project under NEPA. As documented in the following section, both noise and air-quality impacts are fully addressed in the Final Environmental Assessment, and concern for noise impacts (and significant environmental impacts more broadly) permeated the agency's decision-making process from the outset.

B. The FAA considered noise and emissions thoroughly during the environmental review process.

From the outset, FAA designed the Project to achieve FAA's mandatory goals of safety and efficiency without causing any significant environmental impacts, chief among them aircraft noise. One of the anticipated benefits of the next-generation transition is to "reduce aviation's impact on the environment." AR 9-A-23 at 4, JA _____. FAA anticipated that the new strategic approach to procedure design used in this Project would achieve its goals "while also potentially reducing fuel

burn, emissions, and noise.” AR-9-B-2 at 14, JA _____. New performance-based navigation procedures also allow use of “optimized profile descents,” where planes fly a continuous descending path toward the runway without leveling out at various intermediate altitudes. This reduces fuel consumption and emissions, and reduces noise, because the plane is set to near idle throttle. AR 9-B-5 at 1, JA ____; AR 1-B-1 at 1-11 to 1-12, JA ____-_____.

With these goals in mind, the initial Study Team that preliminarily defined the scope of this Project focused on solutions that would not lead to significant adverse environmental impacts. AR 4-B-1 at 5, JA _____. The study team worked with environmental specialists to guide the initial designs. *Id.* at 13, JA _____. In many cases, historical flight tracks were used instead of designing procedures that would overfly new areas, so as to reduce the possibility of adverse noise and pollution impacts on new communities. *Id.* at 7, JA _____. Preliminary designs were screened for potential noise impacts before being given further consideration, using guidance in effect at the time. AR 4-B-5, JA _____.

Once the Study Team completed its work, the Design & Implementation Team began to develop the specific set of procedures that would ultimately become the Project. Throughout their design process, they tried to keep aircraft within historical flight tracks to minimize noise impacts. AR 3-A-7 at 91, 121, 226, 227, 258, 509, 527, 566, 635, 671, JA ____-_____. The team’s meeting notes reflect discussions about noise impacts. AR 5-F-2 at 103-04, 250, 281, 412, 433-34, JA ____-_____. Wherever airports already had voluntary noise abatement procedures, the Design & Implementation team tried to replicate those

procedures to preserve their noise-minimizing benefits. AR 1-B-1 at 3-23, JA ____.

After publishing the Draft Environmental Assessment and receiving public comments, FAA made numerous changes in an attempt to address concerns about noise and air quality. AR 1-B-1 at 3-37 to 3-53, JA ____-____. Along with the Final Environmental Assessment, FAA published a White Paper discussing in detail changes to some procedures that were made in response to community concern about environmental impacts (primarily noise). AR 3-A-8, JA _____. Included in this White Paper are changes to procedures at LAX, made specifically in response to comments made by Culver City. *See supra* p. 8-9. FAA made all of these adjustments voluntarily in order to address public concerns. No adjustment was required by FAA regulations or guidance, as neither areas of concern to Petitioners nor any other part of the region experienced a Project-related change in noise above the thresholds defined as “significant.” AR 9-A-11 at A-60 to A-61, JA ____-____ (defining significant impact thresholds for noise).

Petitioners’ accusation that FAA never even “considered” noise or emissions pollution when designing the Project is plainly contradicted by the administrative record. Indeed, Petitioners contradict the claim themselves by acknowledging the detailed discussion of noise and air pollution in the Final Environmental Assessment, but objecting to the particular approaches taken by FAA’s analysis. Op. Br. at 46-63. Petitioners are incorrect that any of FAA’s determinations were unreasonable, and FAA’s ultimate conclusion that the Project would have no significant impacts is fully supported by this record.

IV. The FAA fully complied with NEPA in considering and approving the Southern California Metroplex Project.

When reviewing a Finding of No Significant Impact, this Court must determine only “whether the agency: (1) has accurately identified the relevant environmental concern, (2) has taken a hard look at the problem in preparing its EA, (3) is able to make a convincing case for its finding of no significant impact, and (4) has shown that even if there is an impact of true significance, an EIS is unnecessary because changes or safeguards in the project sufficiently reduce the impact to a minimum.” *TOMAC v. Norton*, 433 F.3d 852, 861 (D.C. Cir. 2006) (internal quotation marks omitted). As to the specifics of a given environmental impact, the evaluation of those impacts is “left to the judgment of the agency.” *Id.* (quoting *Public Citizen v. NHTSA*, 846 F.2 256, 267 (D.C. Cir. 1988)).

As documented below, FAA took a “hard look” at the potential environmental impacts of this Project. Although Petitioners object to FAA’s method of evaluating noise and air impacts, and to FAA’s decision that certain unrelated projects need not be considered as cumulative impacts, Petitioners identify no environmental impact that was overlooked or omitted from the environmental assessment. Petitioners’ NEPA arguments amount to nothing more than an attempt to “flyspeck an agency’s environmental analysis, looking for any deficiency no matter how minor.” *WildEarth Guardians v. Jewell*, 738 F.3d 298, 308 (D.C. Cir. 2013) (quoting *Nevada v. Dep’t of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006)). But that is not this Court’s role, and the Petitioners’ NEPA arguments provide no basis for remanding FAA’s order.

A. The FAA reasonably identified the purpose and need of the Project.

This Court reviews FAA's statement of its objectives in the Environmental Assessment using a deferential "rule of reason," giving "considerable deference to the agency's expertise and policy-making role." *Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011) (citing *City of Alexandria v. Slater*, 198 F.3d 862, 867 (D.C. Cir. 1999); *Citizens Against Burlington v. Busey*, 938 F.2d 190, 195-96 (D.C. Cir. 1991)). An agency may not rely on an "unreasonably narrow" objective that compels selection of one specific alternative. *Id.* But so long as an agency reasonably defines its objectives in a manner that does not pre-determine the outcome of its decision-making process, this Court must defer to that statement of purpose and need. *Id.*

The Final Environmental Assessment in this case explains that the "need" for the Project comes from "the inefficiency of the existing aircraft flight procedures in the Southern California Metroplex." AR 1-B-1 at 2-1, JA _____. The document then provides 15 additional pages of detail elaborating on these inefficiencies and why they must be addressed. *Id.* at 2-1 to 2-15, JA _____-_____. The "purpose" of the proposed Project is to address these efficiency problems "while maintaining or enhancing safety." *Id.* at 2-15, JA _____. More specifically, FAA identified three objectives for the Project: (1) improving flexibility as traffic transitions from one set of controllers to another; (2) improving the segregation of arrivals and departures; and (3) improving the predictability of transitions as aircraft enter different parts of the airspace. *Id.*

Petitioners raise two objections to this statement of purpose and need. The first is that FAA defined the purpose and need “so narrowly that only one ‘alternative’—the proposed flight routes—could fulfill that purpose.” Op. Br. at 84. Petitioners do not elaborate further on this objection, and it makes little sense in the context of a Metroplex Project approving more than 150 distinct procedures. Numerous changes were made to those procedures after publication of the Draft Environmental Assessment, demonstrating that FAA was not rigid in its definition of the proposed alternative. The purpose and need statement stated broad objectives—safety and efficiency—without specifying the means by which those objectives were to be accomplished. AR 1-B-1 at 2-15, JA _____. FAA chose an alternative that approved 153 NextGen departures and arrivals along with 21 new approach procedures, each of which was evaluated in the Environmental Assessment for its ability to satisfy the stated purpose and need of the Project.

Petitioners’ second objection is that FAA’s stated objectives omitted any reference to reducing aircraft noise or emissions of air pollutants. Op. Br. at 86. Petitioners are correct that reducing noise and emissions was never the intended purpose of the Project. But Petitioners are incorrect that Congress *required* FAA to reduce noise and emissions in this Project. Petitioners cite the Vision 100 statute’s aspirational goal asking FAA to take noise and emissions “into consideration, to the greatest extent practicable.” Op. Br. at 86. But as was discussed above, FAA satisfied this goal by evaluating the proposed procedures for their noise and emissions impacts and making adjustments to minimize those impacts “to the greatest extent practicable.” *Supra* p. 23-25. Nothing in that statute obligated FAA to

reduce noise and emissions as a primary purpose of the Project. FAA's statement of purpose and need was reasonable in light of its Congressional mandate to enhance safety and efficiency of the national airspace, 49 U.S.C. § 40103, and it should therefore be upheld. *See, e.g., Citizens Against Burlington*, 938 F.2d at 196 (requiring agencies to “always consider the views of Congress” when defining objectives for proposed actions).

B. The FAA identified a reasonable range of alternatives.

The responsibility to determine how alternatives will be evaluated in a NEPA document rests with the action agency. *Citizens Against Burlington*, 938 F.2d at 195. The “rule of reason” applies to both “*which* alternatives the agency must discuss, and the *extent* to which it must discuss them.” *Id.* (internal quotation marks omitted). In the present case, FAA considered both the proposed alternative and the no-action alternative, and Petitioners argue that NEPA required more. Op. Br. at 87. But Petitioners' argument is nothing more than a repetition of their previous mistaken argument that “FAA was required under NEPA and Vision 100 to develop and analyze alternatives that reduce noise and emission exposure.” *Id.* There is no such requirement in either statute.

FAA's range of alternatives here was reasonable. Although it may appear superficially that the Environmental Assessment considered only one action alternative, the situation was more complicated. “The Proposed Action that this Environmental Assessment evaluates is a package of many individual, interrelated procedures combined into one alternative. This group of procedures were [*sic*] considered and

evaluated in combination with one another to determine whether the alternative may meet the project's Purpose and Need." AR 2-A-1 at 3-1, JA _____. And the individual procedures were also individually tested to determine whether they met the purpose and need of the Project, with several being rejected during development. *Id.* This development process demonstrates a robust consideration of a wide range of procedures—rather than a simple, single alternative—even though the complete package of procedures approved for further consideration was then combined into a single “alternative action” for NEPA purposes. Nothing more was required of FAA.

C. The FAA's choice of noise model was appropriate and consistent with FAA's guidance and regulations.

FAA forecasts potential environmental impacts from aircraft noise by using sophisticated computer models that change over the years as technology develops. For this Project, the Final Environmental Assessment relies on noise modeling conducted using a program known as the Noise Integrated Routing System, a well-established program used by FAA for many years. When FAA's study team for this Project first convened in 2011 to consider potential new NextGen procedures, it used a component of the Noise Integrated Routing System to screen out proposals that might lead to significant noise increases. AR 4-B-1 at 15, 26, JA ____-____. Once the design team reviewed these preliminary plans, it employed a contractor to begin more detailed design work and to help prepare the necessary environmental review. AR 9-F-5, JA _____. The contract stipulated that the most recent version of the Noise Integrated Routing System must be used to evaluate noise impacts, *id.* at A-6, JA

___, a requirement consistent with controlling FAA guidance in place at the time. AR 9-A-11 at A-60, JA ___.

A little over a month later, FAA issued new guidance requiring the use of a different noise model, the Aviation Environmental Design Tool, for all projects begun after that date. AR 9-A-13, JA ___ (Mar. 21, 2012 FAA Guidance Memorandum). The newer model was “not required for projects whose environmental analysis began before March 1, 2012.” *Id.* FAA therefore continued to use the Noise Integrated Routing System to evaluate noise impacts of the Project, as it had for the previous year. This decision was consistent with FAA’s guidance, which was intended only to apply to new projects not yet underway when the guidance issued.

Petitioners nevertheless object that FAA was required to begin its environmental analysis of the Southern California Metroplex anew in March 2012, using the newer noise model. Op. Br. at 48-50. Petitioners point out that the final noise analysis for the finished procedures that would become the final Project relied on a year’s worth of historical data gathered after issuance of the new noise-model guidance. Op. Br. at 48. In Petitioners’ view, because this “noise analysis” did not begin until after the new guidance issued, Op. Br. at 48, FAA could not say that the Project’s “environmental analysis began before March 1, 2012.” AR 9-A-13, JA ___.

But it had so begun. As FAA explained in response to comments regarding its choice of noise model, it had already begun conducting some environmental analysis on the preliminary designs in 2011. AR 1-B-12 at F-23, JA ___. The noise model used for this Project was not superseded by FAA guidance until several months after environmental

analysis was underway. *Id.* at F-24, JA _____. FAA therefore decided that continued use of the Noise Integrated Routing System was appropriate, a decision consistent with its March 23, 2012 guidance. AR 9-A-13, JA _____.

That guidance also provided an additional exception to the general requirement to apply a different noise model to projects begun after that date. The FAA's Office of Environment and Energy could give "advance written approval" to "use an equivalent methodology and computer model." *Id.* As FAA continued its environmental analysis of the Southern California Metroplex Project, it twice received this approval for its continued use of the Noise Integrated Routing System. AR 3-A-3 at 120, JA ____; AR 3-A-4 at 120, JA _____. Were there any problems with the continued use of this model for the Southern California Metroplex Project, the Office of Environment and Energy—the same office that wrote the guidance memo on which Petitioners now rely—would not have granted these written authorizations.

Finally, use of a noise model different from the one that Petitioners prefer did not prejudice them in any way. If Petitioners' concern is that FAA has failed to provide information that NEPA requires, FAA has already remedied that injury by addressing this issue directly in response to comments on the Draft Environmental Assessment. AR 1-B-12 at F-23 to F-24, JA ____-____. There, FAA voluntarily committed to performing a new noise analysis using the Petitioners' preferred noise model (the Aviation Environmental Design Tool). *Id.* FAA performed that analysis in 2017, and emailed the results

directly to Petitioners as well as posting it publicly on the Project website.⁴

The results made clear that there were no significant noise impacts from the Project, no matter which noise model is used.⁵ Petitioners fail to mention that FAA has already corrected any perceived procedural error on this point, and they fail to identify any specific harm they might continue to suffer from FAA's fully-explained determination that its original choice of noise model was appropriate. Petitioners therefore give this Court no basis to remand this matter to FAA. *See, e.g.*, 5 U.S.C. § 706 (“due account should be taken of prejudicial error”); *Air Canada v. Dep't of Transp.*, 148 F.3d 1142, 1156 (D.C. Cir. 1998) (the party asserting error must demonstrate prejudice from the error).

D. The FAA measured noise impacts using the appropriate noise metric.

In addition to objecting to the particular computerized noise model used by FAA, Petitioners also object to the metric used by FAA to measure and compare the results of its noise analysis. To analyze noise impacts from new air-traffic procedures like the ones created for this

⁴ The report may be found at https://www.faa.gov/nextgen/nextgen_near_you/community_involvement/socal/media/AEDT_Analysis.pdf (last visited Apr. 30, 2018).

⁵ The only relevant difference in the result of the two different analyses was that the Aviation Environmental Design Tool identified a larger increase in noise at one mobile home park near John Wayne International Airport. This increase was “reportable” under FAA guidance, but still not “significant” as defined by the applicable FAA order. AR 9-A-11 at A-60 to A-65, JA ____ - ____.

Project, FAA must measure noise using the yearly day/night average sound level (“DNL”). AR 9-A-11 at A-60, JA _____. The thresholds of significance used by FAA in making NEPA determinations are also defined in terms of DNL. *Id.* at A-61, JA _____. FAA therefore reported all anticipated noise impacts using the DNL metric. *See* AR 1-B-12 at F-18, JA _____.

Petitioners’ allegation that use of DNL “dramatically understates” the noise impacts of the Project has no basis in the record. Op. Br. at 60. Petitioners point to no error in the methodology used to establish DNL as a metric and to no alternative analysis of the Project that would support their claim. Indeed, as discussed above, FAA re-analyzed the project using a different noise model and the results confirmed the conclusions in the Final Environmental Assessment. *Supra* pp. 32-33. Petitioners instead request the use of a different metric, one used for some airport construction and development projects in California.

This alternative metric, the Community Noise Equivalent Level (“CNEL”), gives greater weight to aircraft noise occurring in the evening. DNL accounts for the fact that aircraft noise at night is disruptive to sleep by adding 10 decibels to any noise events between 10:00 PM and 7:00 AM, before the noise is averaged over the course of the day. 14 C.F.R. § 150.7. CNEL does the same thing, but also adds approximately 5 decibels to noise events between 7:00 PM and 10:00 PM. Therefore, a noise analysis that includes events within that three-hour time period will result in different values depending on whether CNEL or DNL is the metric.

But this does not mean that the Environmental Assessment’s noise results were “indisputably understated.” Op. Br. at 61. FAA *does*

dispute this, for one simple reason: DNL is the relevant legal metric for applying the thresholds of significance that are the entire point of a noise analysis in an environmental assessment. FAA used DNL for reporting potential noise impacts in the Northern California Metroplex Project approved just two years prior.⁶ Reporting noise here in CNEL units would have been both unhelpful and misleading, because all of the significance thresholds that trigger further NEPA review and other FAA action are expressed in terms of DNL. AR 9-A-11 at A-60 to A-65, JA ___ - ___.

In any event, Petitioners are wrong that use of CNEL was required here. CNEL is required by the State of California for many projects undergoing environmental review pursuant to the California Environmental Quality Act, the state's analogue to NEPA. Cal. Pub. Res. Code § 21000, *et seq.* Because many airport development projects require approval under both NEPA and this state law, FAA *allows* use of CNEL for those projects in California. FAA Order 5050.4B, Chapter 1 § 9.n at 8. That is, "FAA accepts the CNEL when a state requires that metric to assess noise effects," but FAA does not *require* use of CNEL. FAA Order 5050.4B *Airports Desk Reference*, Ch. 17 para. 1(c) at 2. State environmental review was not required for this Project. The Final Environmental Assessment explains that "the Proposed Action does not involve physical construction of any facilities such as additional runways or taxiways, and does not require permitting or other approvals or actions on a state or local level." AR 1-B-1 at 2-17 to 2-18, JA ___; *see also* AR 1-B-12 at F-18, JA ___.

⁶See http://www.metroplexenvironmental.com/norcal_metroplex/norcal_introduction.html (last visited May 7, 2018).

Petitioners also suggest that FAA's use of DNL undermined its consideration of cumulative effects, theorizing that adding noise impacts quantified with two different metrics would be "adding 'apples to oranges.'" Op. Br. at 62. Petitioners are incorrect. Their argument does not account for the actual cumulative effects analysis conducted for this Project and the way in which effects were evaluated. Table 5-7 of the Final Environmental Assessment shows that the other past, present, and reasonably foreseeable future projects likewise had no significant environmental effects. AR 1-B-1 at 5-20 to 5-22, JA ___-___. In the section discussing FAA's methodology for calculating cumulative effects of the Project, FAA explains because there were no *reportable* noise impacts (a much lower threshold than for *significant* impacts), adding the impacts from other projects would not have resulted in significant noise impacts *no matter the metric used to quantify them*. *Id.* Furthermore, many of the runway projects listed in Table 5-7 were accounted for in FAA's no-action alternative, and so the noise model appropriately compared the Project's noise to a baseline that included these effects. AR 3-A-4 §§ 5.1 to 5.2, JA ___-___. Petitioners do not identify a single project not addressed in the cumulative impacts section that could have resulted in significant environmental impacts were CNEL used to calculate the resulting noise impacts from this Project. There is no such project.

E. The FAA’s NEPA documents disclosed all proposed flight paths to the public and the Final Environmental Assessment conducted new analysis to account for any changes made.

An environmental assessment is required to be “concise,” and it is designed to “[B]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9(a)(1). If an agency discovers likely significant impacts, such that it must prepare an environmental impact statement, then an agency has additional responsibilities for public engagement. *Br. of Amicus City of Los Angeles* at 17 (citing regulations applicable only to environmental impact statements). But in a case like this one, where no significant impacts were expected, and where no party has identified a potential impact that was overlooked, FAA’s provision of information to the public went far beyond what was required of it by the Council on Environmental Quality’s regulations implementing NEPA.

Amicus City of Los Angeles acknowledges that the information provided by FAA was “helpful to some of the public,” but it nevertheless argues that much more was required. *Op. Br.* at 25. Notably, no party has ever specified in what form FAA was allegedly required to provide this information, instead arguing only that FAA’s provision of information was insufficient. Los Angeles County alone contains more than 10 million people, and it is only one of nine counties encompassed by the Project. No law requires FAA to provide *actual notice* to every potentially affected individual. To the contrary, this Court has recently held that FAA satisfies its public-notice obligations for an environmental assessment when it publishes notice of that document in

a widely-available newspaper. *Citizens' Association of Georgetown v. FAA*, 886 F.3d 130, 140 (D.C. Cir. 2018). FAA did that here. AR 7-A-3 to 7-A-8, 7-B-2 to 7-B-11, JA ___ - ___.

FAA also did much more.

In the Environmental Assessment and accompanying documentation, FAA provided extensive information about the new proposed procedures to ensure that the public could comment fully on the proposal before FAA reached its final decision. The Draft EA included detailed maps of both the no-action alternative and the proposed action. AR 2-A-1 at 3-15 & 3-27, JA ___ - ___. These maps, presented as layered PDFs, allowed anyone viewing them on a computer to turn on and off individual layers and thereby to depict individual flight corridors from each proposed procedure. *Id.* Embedded in the maps were detailed instructions on how to use them. *Id.* During the public comment period, FAA provided diagrams of the proposed procedures overlaid on maps of the area. The Final Environmental Assessment reproduces more than 100 of these diagrams, organized by airport location. AR 2-A-7 at 566-640, JA ___ - ___. FAA also released Google Earth files available on the Project website, allowing for a detailed view of the procedures from any chosen on-the-ground location.⁷ FAA released the distribution packages from its TARGETS software, depicting multiple tables, text descriptions, and graphics for each proposed procedure.

⁷ These files remain available and, along with instructional videos explaining how to use them, may be seen at http://www.metroplexenvironmental.com/socal_metroplex/socal_docs.html#ge (last visited April 30, 2018).

The Google Earth files, in particular, provided a wealth of information to any interested member of the public with access to a computer and a copy of Google's free software. Users could focus on any particular area with a grid point and see the backbone of nearby air-traffic procedures along with information about noise impacts specific to that grid point. The files depict all of the flight corridors depicted in Chapter 3 of the Environmental Assessment, along with the model flight tracks used in the noise-modeling software to assess potential impacts. The designs for the routes of each procedures and locations of waypoints were depicted. And the results of the noise analysis for each grid point modeled under each scenario were included—i.e., Existing Conditions, No-Action Alternative (both 2016 and 2021), and the Proposed Action (both 2016 and 2021). AR 1-B-1 at 5-3 to 5-6, JA ___ - ___. Petitioners barely acknowledge this information, ignoring the Google Earth documentation as well as the Draft Environmental Assessment itself. Op. Br. at 63. As to the TARGETS packages—which provided specific distances, altitudes, longitude and latitude, and more information about the location of waypoints—Petitioners suggest that they received this information with inadequate time to comment. *Id.* But in fact, FAA extended the public-comment period after the TARGETS packages were released so that the public had several more weeks to review that information and provide comments.

Petitioners clearly *did* review those documents, correctly observing that FAA moved the location of the CLIFY waypoint after the Draft Environmental Assessment. Op. Br. at 63-64. The Final Environmental Assessment depicts this move and explains it. AR 1-B-1 at 3-37 to 3-39 & Fig. 3-2, JA ___ - ___. “FAA determined that moving

CLIFY to its current proposed location provides more compatibility with other routes and air traffic sector designs.” *Id.* In addition, this move kept flights more within historic flight tracks, aligning these arrivals into LAX with areas already being overflowed with arrivals, and resulting in a higher altitude (and therefore less noise) for arrivals using the CLIFY waypoint. *Id.* These benefits are explained in the Final Environmental Assessment. AR 1-B-12 at F-17 to F-18, JA ___ - ___.

Petitioners make the unfounded allegation that the Final Environmental Assessment’s noise analysis did not account for this move. Op. Br. at 64 (claiming “no new analysis was performed on the new location”). Petitioners are wrong: as the Final Environmental Assessment explains, the noise analysis was performed anew after that change occurred, because the extension of time for extra public comments changed the implementation year of the Project, requiring an updated analysis. AR 1-B-1 at 3-38, JA ___. The new location of CLIFY was reflected in this updated analysis, which was performed after the CLIFY location changed. The results were that no significant noise impacts were anticipated.

Petitioners’ claims with respect to the CLIFY waypoint are baseless. But even if they had been correct, FAA would have committed no error of law. FAA applied a Lateral Movement Test explained in its Guidance for Noise Screening of Air Traffic Actions, AR 3-B-37 at 6-7 to 6-9, JA ___ - ___, which demonstrated that the lateral movement of CLIFY was not considered significant in and of itself, and thus required no additional noise analysis. Nevertheless, FAA *did* conduct additional environmental review that accounted for the move, and did so reasonably.

The Project also shifted some aircraft arriving downwind from the north into LAX by about half a mile to the north but within historical flight tracks. Amicus City of Los Angeles objects (at 10-11) to this movement, noting that it has generated a large number of noise complaints from that area along the Interstate 10 corridor. But although these procedures are slightly northward of the ones they replace, the new location is consistent with historical flight tracks, as planes were routinely controller-vectored through that area in the past. FAA focused on retaining planes in their prior locations where possible to avoid shifting significant noise to new locations. The location of the new procedures is also consistent with Culver City's comments, specifically requesting that procedures be moved north to overfly Interstate 10. AR 1-B-12 at F-767, JA _____. Throughout the Project, FAA received requests to move overflights in a manner that would benefit one community but shift noise over other communities. FAA reasonably designed the Project to comply with its purpose and need, which was focused on safety and efficiency.

Amicus City of Los Angeles also objects (at 32) that some planes are flying at lower altitudes through the "DAHJR" waypoint than is required by some of the new procedures. To the contrary, such occurrences are consistent with the procedure as designed. Aircraft assigned the NextGen procedure are complying with the 6,000-foot altitude restriction when able. Air traffic is dynamic, however, and the volume and complexity of air traffic in this area often requires aircraft to be vectored by controllers off the procedure as they arrive into LAX. The City of Los Angeles has identified no error in FAA's forecast of

potential environmental impacts from procedures using this particular waypoint.

Nor is Los Angeles correct in asserting (at 31) that the procedures are not being used properly because FAA has not implemented a Terminal Sequencing and Spacing Tool. Use of this tool is not “critical,” *id.*, or even necessary. The Final Environmental Assessment never mentions this tool, and the new procedures do not require it because aircraft on these procedures will be equipped with an appropriate flight management system. That FAA does not currently use the tool is no indication of a failure of its NEPA analysis of the Project.

F. The FAA considered all reasonably foreseeable cumulative impacts.

NEPA requires an agency to consider not just the direct and indirect effects of its proposed action, but also “cumulative impacts” resulting from “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” 40 C.F.R. § 1508.7. This Court has held that when a proposed action will have minimal impacts on an environmental resource, an agency may reasonably conclude that it will not lead to any significant cumulative impacts. *Minisink Residents for Environmental Preservation & Safety v. FERC*, 762 F.3d 97, 113 (D.C. Cir. 2014). FAA applied that reasoning here, where the noise analysis revealed no reportable noise impacts, let alone any significant impacts. “Because there is no potential for impact, those environmental resource categories that are not affected by the Proposed Action . . . are not further evaluated for cumulative impacts.” AR 1-B-1 at 5-19, JA _____. This approach is consistent with the law and

fully supported by the administrative record. As explained below, Petitioners identify no error of law in this approach; instead, they incorrectly claim a factual omission. Op. Br. at 74-77.

1. Movement and extension of a runway at LAX was not “reasonably foreseeable.”

Petitioners suggest that FAA should have evaluated an additional proposal: the Los Angeles International Airport Specific Plan Amendment Study, which considered changes to the airport layout plan at LAX. Op. Br. at 76. In 2013, that document identified as its preferred alternative moving Runway 6L/24R 260 feet to the north and then extending it 1,250 feet to the east. AR 1-B-13 at F-772, JA _____. FAA concluded that this proposal was not “reasonably foreseeable” and therefore its potential cumulative impacts need not be considered further. *Id.* FAA’s conclusion was not arbitrary or capricious.

First, the environmental documents prepared under California law for this proposal lacked sufficient specificity for meaningful analysis. *Id.* The proposal was reviewed “at a programmatic level that provided for only a high level of analysis of the potential environmental impacts, and thus further refinement and project-level environmental analysis would likely be required.” *Id.* Second, the proposal was for 2025, which was four years past the 2021 planning horizon for the Southern California Metroplex Project’s NEPA review. *Id.* Third, contrary to Petitioners’ claims, neither the City nor FAA has “approved” this proposal and so it is by no means “imminent.” Op. Br. at 76-77. The City of Los Angeles agrees that the proposal is not “reasonably

foreseeable.” Br. of Amicus City of Los Angeles at 29-30 n.18. The City is not conducting any further review of this proposal at this time. *Id.*

Projects that have been announced with a notice of intent to conduct further review, but are otherwise only an “incipient notion” not yet made concrete, are not “reasonably foreseeable.” *Theodore Roosevelt Conservation Partnership v. Salazar*, 616 F.3d 497, 513 (D.C. Cir. 2010). FAA properly concluded that the proposed change to the airport layout plan of LAX was not reasonably foreseeable and thus required no further analysis for cumulative impacts.

2. The Project will not increase the number of operations at LAX.

The Final Environmental Assessment explains that the Project will not increase the “number and type of aircraft operations,” because it “does not include developing or constructing facilities, such as runways or terminal expansions, that would be necessary to accommodate an increase in aviation activity.” AR 1-B-6 at 3, JA ____.

Petitioners do not disagree that the Project will have no direct effect on the number of aircraft operations in the area. But they suggest that an increase in operations would be the cumulative effect of the Project when combined with the City’s proposal to move and extend a runway at LAX. Op. Br. at 78. That assumes, of course, that the runway-expansion project is likely to occur, but (as explained in the previous section) the City of Los Angeles (which owns and operates LAX) has told this Court that the project is not currently being considered.

Petitioners also rely on a definition of “capacity” found in an FAA advisory circular that has no application to this Project. Op. Br. at 78-

79 (citing FAA Advisory Circular 150/5060-5, *Airport Capacity and Delay* at 1 (Sept. 23, 1983)). In that definition, which applies to capacity-enhancing projects like the construction of new runways, “capacity” is defined in terms of “throughput rate,” meaning the number of aircraft operations that can take place in an hour.” *Id.* at 79.

Petitioners then suggest that because the proposed runway expansion at LAX will increase “efficiency,” albeit a completely different type of efficiency tied to increased numbers of operations, the Project “inevitably leads to increased ‘throughput’ which is synonymous with increased ‘capacity.’” *Id.*

This tortured attempt at making one context-specific definition of “capacity” synonymous with the definition of “efficiency” in a very different type of Project is to no avail. FAA clearly defined what “efficiency” means for *this* Project, and it has nothing to do with “throughput rate.” The Project does nothing to enhance the capacity on the ground at LAX or at any other airport. AR 1-A-1 at 3, JA ____.

Instead, this Project improved the efficiency of the national airspace system by improving flexibility in transitioning aircraft from one group of controllers to another, by segregating arrivals from departures, and by improving the predictability of those transitions. AR 1-A-1 at 4, JA ____.

FAA’s purpose for engaging in this Project was to increase safety and improve operational efficiency in the sky and in air-traffic control facilities. The project does not enhance capacity and therefore will have no cumulative effect on the capacity of LAX or of any other airport.

G. The FAA appropriately considered the impacts of greenhouse gas emissions.

- 1. FAA quantified the impacts of increased emissions within the study area and reasonably concluded that it would have no significant impacts.**

No federal standards exist for reporting the emissions of greenhouse gases from aviation sources, and there are no federal standards establishing significance thresholds of emissions for NEPA purposes. AR 9-A-12 at 2 para. 1, JA _____. At the time FAA issued its Record of Decision, the Council on Environmental Quality had issued guidance regarding how to address greenhouse gases in NEPA documents. *Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects on Climate Change in NEPA Reviews* (Aug. 1, 2016) (2016 *Guidance*). This guidance clearly stated that it was not a rule or regulation. *Id.* at 1 n.1, 2 n. 3. The guidance was subsequently withdrawn. *Withdrawal of Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change on NEPA Reviews* (Apr. 5, 2017).

Because it was in effect at the time the Project was being evaluated, FAA complied with recommendations in the 2016 *Guidance*. AR 1-B-1 4-28, JA _____. The Final Environmental Assessment forecast the anticipated emissions of carbon dioxide from the Project in metric tons, assessing this information both qualitatively and quantitatively. AR 1-B-1 at 5-18, JA _____. This level of detail in an environmental assessment exceeds what is required for an environmental impact

statement. *Wildlife Guardians v. Jewell*, 738 F.3d 298, 309 (D.C. Cir. 2013) (“Because current science does not allow for the specificity demanded by the Appellants, the [agency] was not required to identify specific effects on the climate in order to prepare an adequate [environmental impact statement].”) The resulting analysis anticipated an increase in carbon-dioxide emissions of 0.41 percent in 2016 and 0.44 percent in 2021 when compared to the no-action alternative.

The anticipated change in emissions was well below the amount about which the Council on Environmental Quality expressed general concern. Its guidance provided “a reference point of 25,000 metric tons CO₂ -equivalent emissions on an annual basis below which a quantitative analysis is not recommended unless quantification is easily accomplished.” *Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change on NEPA Reviews*, 79 Fed. Reg. 77,802, 77,807 (Dec. 24, 2014). The Project would increase carbon dioxide by approximately 35 metric tons in 2016 and 42 metric tons in 2021. AR 1-B-1 at 5-18. This is less than 0.2% of the threshold of concern established by the Council on Environmental Quality, where the threshold is not the measure of “significance” but merely the point at which an analysis of emissions should be included *at all*. 79 Fed. Reg. at 77,808. FAA quantified its anticipated emissions impacts and reasonably concluded that these increases were not likely to significantly affect the human environment. AR 1-B-6 at 18, JA ____.⁸

⁸ It is not clear why Petitioners insist that the environmental assessment “omits . . . acknowledgement of the direct relationship between fuel burn” and greenhouse gases. Op. Br. at 83. Obviously, the

2. FAA was not obligated to comply with California law reducing the State's greenhouse-gas emissions.

Petitioners next state that FAA was “responsible for considering the way in which the Project will affect the State of California . . . in reaching its emissions reductions goals under AB 32, the California Global Warming Solutions Act of 2006.” Op. Br. at 82 (citing Pet. Addendum at 99). But nothing in that statute purports to impose a duty on the federal government to reduce *its* emissions. The Act requires California's Air Resource Board to promulgate regulations limiting greenhouse-gas emissions, and to develop other programs to that end. Pet. Addendum at 102-04. But that Board has promulgated no regulations governing emissions from aviation sources. *See* Cal. Health & Saf. Code § 38580.⁹

Petitioners also misidentify this state law as a “state implementation plan” under the Clean Air Act. Op. Br. at 83. It is not. Failure to consider an inapplicable state law in no way violates FAA's obligations under the “federal/state compact” implicitly established by the Clean Air Act. Op. Br. at 83-84. FAA reasonably quantified the

increase in carbon dioxide from the Project is the direct result of more fuel being burned within the study area, a fact that the Environmental Assessment acknowledges.

⁹ Nor is it clear that California *could* impose limits on emissions from aviation sources regulated by the federal government. Section 233 of the Clean Air Act preempts any state or local regulation “respecting emissions of any air pollutant from any aircraft or engine thereof” unless the regulation is “identical” to federal regulations. 42 U.S.C. § 7573. There are no federal regulations limiting greenhouse-gas emissions from aircraft. *See* 40 C.F.R. Part 87. Any attempt to limit emissions under the California Global Warming Solutions Act of 2006 would seem to conflict with this provision of federal law.

effects of greenhouse-gas emissions within the study area and concluded they were well below levels that could be considered significant for NEPA purposes.

H. FAA properly considered the potential impacts of the Project on historic properties and environmental justice communities.

Amici, but not Petitioners, criticize FAA's compliance with its obligations to consider environmental justice communities as well as its obligations under the National Historic Preservation Act. This Court does not ordinarily entertain arguments not raised by parties.

Narragansett Indian Tribe v. Nat'l Indian Gaming Comm'n, 158 F.3d 1335, 1338 (D.C. Cir. 1998); *Michel v. Anderson*, 14 F.3d 623, 625 (D.C. Cir. 1994). Amici have presented no compelling reasons to do so here, and this Court may properly disregard Amici's arguments. In any event, there is no merit to those arguments.

Before taking action, federal agencies must identify and address any potential for disproportionately high and adverse effects on human health and the environment in areas populated by low-income or minority individuals. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994). Although this executive order creates no right to judicial review, this Court has previously held that FAA may, in its discretion, address environmental justice concerns as part of its NEPA process, which is independently reviewable under the APA. *Communities Against Runway Expansion v. FAA*, 355 F.3d 678, 688-89 (D.C. Cir. 2004). The Final Environmental Assessment does

address these concerns. AR 1-B-1 at 5-14 to 5-15, JA ___-___. No census blocks would experience a change in noise exposure as a result of the Project that exceeds the regulatory definitions of “significant” noise increases. *Id.* The Project would displace neither people nor businesses at any location. FAA therefore reasonably concluded that no disproportionately high and adverse effects on human health and the environment would occur in any area. *Id.*

Similarly, the Final Environmental Assessment addressed potential impacts on historic properties. AR 1-B-1 at 5-9 to 5-10, JA ___-___. FAA identified all known historic properties within the study area and included a noise analysis for their specific locations in the Aircraft Noise Technical Report. AR 3-A-4 at Appendix 2, JA ___. Between designated historic properties and properties covered by Section 4(f) of the Department of Transportation Act (not at issue in this case), FAA added 38,342 individual grid points that were individually analyzed for changes in noise. AR 3-A-4 at Table 2, JA ___. No historic property would experience a significant change in noise exposure as a result of the Project. AR 1-B-1 at 5-9, JA ___. Based on these results, FAA sought and received the concurrence of the State Historic Preservation Officer. AR 1-B-7 at A-279 to A-339, JA ___-___. This process concluded FAA’s obligations under the National Historic Preservation Act. 36 C.F.R. § 800.5(c)(1).

Amicus organization West Adams for Clear Skies objects (at 7-8) to FAA’s treatment of both of these environmental resources, solely on the basis of noise complaints filed with the airport’s governing organization after implementation of the Project. But the noise complaints are evidence only of the fact that individuals have

complained about noise. Complaints about noise are not uncommon in response to public announcements about changes in air-traffic procedures. When public comments were solicited for the Metroplex Project, more than 400 of the comments received by FAA were about existing conditions and noise from procedures already in place. The noise complaints relied on by West Adams provide no indication that FAA's noise forecasts were inaccurate, let alone that FAA's reliance on those forecasts were arbitrary and capricious.

West Adams' description (at 8) of NextGen procedures as following "narrower and more concentrated flight paths" is essentially correct. But FAA's noise analysis anticipated and accounted for this fact, and the resulting forecast predicted no significant noise impacts.¹⁰ The resulting noise was accurately depicted in the information provided by the Draft Environmental Assessment. Any resident of West Adams could look at the Google Earth files provided during the comment period (and still readily available on the Project website) to see the net increase in noise at any particular specified location. All locations along the flight path of concern to West Adams showed resulting noise levels well below the 65 DNL threshold where "significant" noise impacts begin to occur.

¹⁰ West Adams asserts that the extra-record evidence it submitted to this Court shows "an overall decrease in altitude distribution" of aircraft flying particular procedures. Br. of West Adams at 8. Those documents show that while approximately six percent fewer flights are now operating above 6000 feet at the DAHJR waypoint, the percentage of flights operating below 5000 feet has also decreased (meaning more planes are higher off the ground). Addendum B to Br. of Amicus West Adams at 444, 446. The number of aircraft flying below 4000 feet (and therefore the loudest) was decreased by more than half by the Project.

Amicus City of Los Angeles suggests (at 27-28) that FAA was obligated to consult directly with the Los Angeles Office of Historic Resources. FAA complied with its obligation to notify a “representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur.” 36 C.F.R. § 800.2(c)(3). FAA directly notified the mayor, all City Council members, and Los Angeles World Airports, the City component that manages LAX. AR 1-B-7 at A-7 to A-13, A-381 to A-385, A-751 to A-757, JA ___ - ___. All of these parties received notifications about the draft environmental assessment, public workshops, the public comment period (and its extensions), and the final Environmental Assessment. Furthermore, FAA held additional briefings for the mayor, City Council, and Los Angeles World Airports. AR 5-H-8 at 31-32, 36-67, 43, 71, JA ___ - ___. Comments received from City officials made no mention of historic properties and did not challenge FAA’s finding of no adverse impacts. Representatives of the City government also attended FAA’s public workshops. It is no fault of FAA’s that the City of Los Angeles’ representatives never notified the City’s own Historic Preservation Officer throughout this process.

FAA adequately considered potential noise impacts on environmental justice communities and historic properties, and no significant new circumstances have arisen to call that determination into question. For that reason and the many others discussed in this Part IV, FAA fully complied with NEPA in considering and approving the Southern California Metroplex Project.

V. The FAA fully complied with the Clean Air Act when approving the Southern California Metroplex Project.

As explained above, *supra* p. 5-6, the Clean Air Act requires federal agencies to determine whether emissions resulting from their actions will conform to any applicable state implementation plan for specified pollutants. In its Final Environmental Assessment, FAA considered the impacts the Project would have on air quality in the region. AR 1-B-1 at 5-16 to 5-17, JA ___ - ___. FAA explained that while “a slight increase in emissions” overall is expected to result from the Project, these are “expected to have little if any effect” on concentrations of pollutants near the ground. AR 1-B-6 at 5-16, JA ___. The Environmental Assessment concludes that the impacts will not be “significant” for NEPA purposes, and it further explains that these impacts are consistent with the FAA’s obligations under the Clean Air Act. The FAA has determined that changes to air-traffic procedures at any altitude presumptively conform with state implementation plans, if the procedures are designed to “enhance operational efficiency.” AR 9-D-6 at 41,578, JA ___. FAA’s reliance on this presumption in approving the Project is consistent with regulations promulgated by EPA to implement the Clean Air Act, and the factual basis for this presumption is clearly explained in the administrative record. Petitioners fail to show any violation of the Clean Air Act in FAA’s approval of the project.

A. The new flight procedures are “presumed to conform” with Clean Air Act requirements.

1. FAA applied the exemption from its own presumed-to-conform list, which does not contain altitude restrictions.

EPA’s initial regulatory list of actions presumed to conform to all state implementation plans includes “Air traffic control activities and adopting approach, departure, and enroute procedures for aircraft operations above the mixing height specified in the applicable [state implementation plan].” 40 C.F.R. § 93.153(c)(2)(xii). The regulation provides that where no mixing height is specified, the default height to be used is 3,000 feet above ground level. *Id.* The “mixing height” is the height above which pollutants that are released do not mix with ground-level emissions and have no effect on ground-level concentrations in that area. AR 9-D-3 at 3, JA ____.

Petitioners make no argument that FAA’s discussion of potential air emissions was incorrect; instead, they argue only that the Project “cannot meet the predicate requirements” of this EPA regulation. Op. Br. at 65. By this, Petitioners mean that the FAA did not adequately explain how the changes implemented by the project occur above the default “mixing height” of 3,000 feet.

But FAA did not rely solely on EPA’s regulatory provision, including its 3,000-foot cutoff, in concluding that the Project was exempt from further Clean Air Act review. Instead, FAA relied on its own list of “presumed to conform” actions published in the Federal Register. *See, e.g.*, AR 1-B-6 at 5-17, JA ____; AR 1-B-7 at F-11 to F-14,

JA ___-___. That list exempts from the conformity-determination requirement all “Air Traffic Control Activities and Adopting Approach, Departure and Enroute Procedures for Air Operations.” AR 9-D-6 at 41,569, JA ___. The exemption does not only apply above the mixing height. The Federal Register notice explains that longstanding research indicates that any operations above 1,500 feet above ground level have “little if any effect on emissions and ground concentrations.” *Id.* Operations at that low altitude are tightly constrained by any number of factors. “Accordingly, air traffic actions below the mixing height are also presumed to conform when modifications to routes and procedures are designed to enhance operational efficiency (i.e., to reduce delay), increase fuel efficiency, or reduce community noise impacts by means of engine thrust reductions.” *Id.* The Project was designed to enhance operational efficiency, and its procedures are therefore exempt from further analysis under the Clean Air Act.

Because FAA was not legally required to perform a conformity determination for the procedures, Petitioners’ misstatements about “most, if not all,” of the procedures involving operations below 3,000 feet may be disregarded. Nevertheless, to avoid misunderstanding, we briefly address these claims here.

B. Changes in potential air emissions will occur at greater than 3,000 feet above ground level.

Petitioners allege that “most, if not all, of the procedures at issue will occur, and the aircraft will operate for varying but extensive periods of time in their implementation, below 3,000 feet.” Op. Br. at 65. Petitioners support this allegation by citing the Final Environmental

Assessment, which states precisely the opposite. That document explains that “changes to flight paths under the Proposed Action would primarily occur at or *above* 3,000 feet” above ground level. AR 1-B-1 at 5-16, JA ___ (emphasis added).

Petitioners appear to confuse “departure” and “arrival” with “takeoff” and “landing.” Most of the arrival and departure procedures established by this Project are between 100 and 200 nautical miles in length, and they are designed for flight entirely above the mixing height with very little exception. Because arrivals into LAX are the primary source of Petitioners’ concerns, we may usefully focus on those arrivals as an example. All Metroplex arrival procedures on the LAX north downwind flow are above 3,000 feet, with all but one design ending at or above 6,000 feet.¹¹ These standard terminal arrival procedures typically terminate at a waypoint near the airport at these minimum altitudes, linking up with required navigation performance procedures that overlay pre-existing approaches. Similarly with departing aircraft, Metroplex departure procedures will begin at a waypoint some distance from the airport after takeoff. Where FAA created new takeoff or landing procedures as part of the Project (as it did in very few places) it overlaid historical flight tracks so that there would be no increase in emissions or change in their location. While Petitioners correctly cite FAA guidance estimating that 10 percent of aircraft emissions are emitted below the mixing height, the relevant inquiry for purposes of evaluating the Project is whether those emissions would change at all. Where FAA changed takeoffs and landings by replacing them with

¹¹ This information is most readily discerned by review of the TARGETS distribution packages in Section Five of the administrative record.

required navigation performance procedures, FAA reasonably concluded that emissions from those stages of operation were presumed to conform because they are more operationally efficient.

C. FAA properly determined that the Project will increase operational efficiency even though a minimal increase in fuel burn is expected within the study area.

Petitioners also object that use of FAA's own presumed-to-conform list was inappropriate because the Metroplex procedures will not increase "efficiency." Op. Br. at 71. Because fuel burn will increase slightly, Petitioners allege that efficiency is necessarily decreased. *Id.* But this is not the appropriate definition of "efficiency" to apply when evaluating this Project.

"While fuel savings may be an ultimate benefit of implementing the SoCal Metroplex Project, it is not a part of the purpose and need for the Project." AR 1-B-12 at F-10, JA _____. Instead, this Metroplex "specifically addresses congestion, airports in close geographical proximity, and other limiting factors that reduce efficiency in busy metroplex airspace." AR 1-B-1 at 2-1, JA ____; *see also* AR 1-B-12 at F-10, F-13, JA ____, _____. Efficiency for purposes of this Project related to the lack of flexibility and predictability in the existing conditions, which could be improved by the introduction of NextGen technology and design. AR 1-B-1 at 2-3, JA _____. Complexity for the aircraft crew and air-traffic controllers were the primary source of those inefficiencies. AR 5-F-2 at 16, 935, 944, JA ____ - ____.

This definition, unlike Petitioners' focus on fuel burn, is consistent with the meaning of "efficiency" as used in FAA's published presumed-

to-conform list. AR 9-D-6 at 41,578, JA _____. There, FAA defined “efficiency” as arrival and departure procedures “implemented to enhance safety and increase the efficient use of airspace by reducing congestion, balancing controller workload, and improving coordination between controllers handling existing air traffic, among other things.” *Id.* The “efficiency” of this Project for Clean Air Act purposes does not mean “reduced fuel burn.”

It is undisputed that the Project will make the Southern California Metroplex more efficient, in terms of predictability, complexity, and other related factors. AR 1-A-1 at 3, 15, JA ____, _____. Petitioners have identified no error in FAA’s assessment of the airspace improvements resulting from the implementation of NextGen procedures, focusing instead exclusively on the amount of fuel consumed within the study area. Op. Br. at 71-73. But that measurement, while relevant for the limited purposes of the environmental assessment, does not tell the whole story.

The Project is anticipated to reduce fuel consumption in the national airspace overall. But much of the fuel savings will occur at higher cruising altitudes, above the “ceiling” used to define the boundaries of the study area for NEPA review. The study area considered in the Environmental Assessment extends from the ground to 10,000 feet above ground for departure procedures, and up to 7,000 feet for arrivals. AR 1-B-1 at 4-1, JA _____. These altitudes (which are thousands of feet above the mixing heights for air pollutants) are sufficient to fully capture impacts that could potentially affect the “human environment.” 42 U.S.C. § 4332(C). But many of the procedures

continue on at higher altitudes for many additional miles, with cruising altitudes of up to 30,000 feet.¹²

Additionally, the Final Environmental Assessment uses a fuel-burn model that does not account for the NextGen improvement of “optimized profile descents” for arrivals. This type of level descent at near idle throttle is an important method to reduce fuel consumption and aircraft noise when compared to conventional descent methods. AR 9-B-5 at 1-2, JA _____. FAA’s current model used for fuel burn analysis assumes that aircraft level off during descent, which they would not need to do when using the Project’s new procedures, and therefore the fuel savings from the Project are not fully captured by this model.

In any event, while NextGen procedures are anticipated to reduce fuel consumption overall in the national airspace, this environmental benefit is ancillary to the efficiency improvements gained by implementing this Project. AR 1-B-12 at F-10. Those improvements, which achieve the purpose and need of the Project, provide a basis for FAA’s reasoned conclusion that this Project is presumed to conform to all state implementation plans, AR 1-A-1 at 15, JA _____.

FAA fulfilled its obligations under the Clean Air Act.

VI. The appropriate remedy for any procedural injury in this case is remand without vacatur.

Petitioners request an injunction prohibiting “any further implementation of the SoCal Metroplex Project.” Op. Br. at 89-90. And

¹² One exception to these upper boundaries was applied to model flight routes up to 18,000 feet above ground level where potential impacts to National Parks might occur. AR 3-A-4 at 2-11, JA _____.

Amici request that this Court order FAA to prepare a supplemental environmental assessment on remand. Amicus Br. of City of Los Angeles at 32-33; Amicus Br. of West Adams at 8-9. Neither is an appropriate remedy in this case.

A. Setting aside all of the procedures implemented as part of the Project is unwarranted and unnecessary.

Petitioners represent one small geographic portion of the entire Project area, expressing concern about (at most) 3 of the 21 affected airports. Because of the pre-Metroplex air-traffic procedures in the study area were already cancelled, if this Court were to vacate or enjoin the NextGen procedures, then LAX and its neighboring airports would be left without procedures to assign in many cases. Air traffic controllers would have to verbally control individual aircraft leading to massive delays and a much less safe working environment.

This Court could instead remand the decision to FAA without vacating it. While remanding without vacating is not “the standard remedy” in an APA case, *American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 (D.C. Cir. 2001), this Court has held that the APA permits such relief. *North Carolina v. EPA*, 550 F.3d 1176, 1778 (D.C. Cir. 2008) (citing *Natural Resources Defense Council v. EPA*, 489 F.3d 1250 (D.C. Cir. 2007)). This Court considers two factors in determining whether to vacate: (1) “the seriousness of the order’s deficiencies” and (2) “the disruptive consequences” of vacating the agency action in the interim. *Allied-Signal, Inc. v. NRC*, 988 F.2d 146, 150 (D.C. Cir. 1993). Both factors weigh in favor of remand without vacatur here.

FAA found no significant noise or air quality impacts from the Project and did so using approved methodologies and legal standards not challenged in this case. Petitioners have not demonstrated that reconsideration of these impacts on remand has any likelihood of leading to a conclusion on remand that the impacts would in fact be “significant.” The seriousness of the order’s deficiencies therefore do not warrant vacatur of the decision in its entirety. Moreover, the “disruptive consequences” to the airspace of Southern California would be quite severe. FAA’s air traffic controllers in the Southern California area are responsible for more than two million aircraft operations per year, and LAX is the nation’s third busiest airport. It is difficult to exaggerate the extent of the adverse impacts of not having procedures for those aircraft to follow for a period of months or even years. This result is not required in order to redress Petitioners’ alleged injuries. Should this Court find injunctive relief nevertheless warranted, Federal Respondents respectfully request the opportunity to address the matter further in supplemental briefing.

B. This Court should not order supplementation of an environmental assessment when the federal action has concluded.

Neither NEPA nor its implementing regulations contain any provision for the supplementation of an environmental assessment. By definition, if a federal action is anticipated to have no significant impact on the human environment, then NEPA requires nothing further of the agency. 42 U.S.C. § 4332. Amici in this case cite regulations governing the supplementation of environmental impact statements, to address

changes in circumstances affecting federal actions likely to cause significant environmental impacts. 40 C.F.R. § 1502.9(c). Those regulations require supplementation if the agency “makes substantial changes in the proposed action that are relevant to environmental concerns,” or if there are “significant new circumstances or information relevant to environmental concerns.” *Id.* But even if those regulatory provisions governed here, they do not apply to present circumstances.

FAA has made no “substantial changes” to the Metroplex Project since issuing its final decision. 40 C.F.R. § 1502.9(c)(1). And the only “new circumstances or information” identified by Amici are noise complaints, which indicate that the complainant is dissatisfied but does not indicate that the average day/night decibel level of aircraft noise experienced by the complainant is above (or even near) the regulatory thresholds necessary to trigger further environmental review. The Project itself has not changed, and no new information about its design or function has arisen since it was implemented in 2017. Therefore, supplementation is not warranted.

Furthermore, a supplemental NEPA document would serve no purpose here. “NEPA assures informed decisionmaking.” AR 9-A-11 at para. 200b, JA ____. An environmental assessment is used by a decision-making official to determine whether a proposed action will have significant environmental effects. 40 C.F.R. § 1508.9(a)(1). Here, there is no proposed action being considered—the Project is fully implemented and the decision-making process long ago concluded. This Court may require further NEPA consideration only of a discrete, identified federal action, *Norton v. Southern Utah Wilderness Alliance*,

542 U.S. 55, 68 (2004), and no such action is left to be taken by FAA here.

CONCLUSION

The petitions for review filed by Culver City and the Santa Monica Canyon Civic Association should be dismissed for lack of jurisdiction. The remaining two petitions should be denied on the merits.

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May 2018

DJ # 90-13-1-14828

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation established by order of this Court dated December 29, 2017, because it contains 16,227 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it was prepared in Microsoft Word using 14-point Century font.

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CERTIFICATE OF SERVICE

I certify that on May 15, 2018, I electronically filed the foregoing Answering Brief of Federal Respondents using this Court's CM/ECF system. All counsel of record are registered for electronic service.

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Nos. 16-1377, 16-1378, 17-1010, 17-1028 (consolidated)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DONALD VAUGHN, *et al.*,
Petitioners

v.

FEDERAL AVIATION ADMINISTRATION, *et al.*,
Respondents

ON PETITION FOR REVIEW OF AN ORDER OF THE
FEDERAL AVIATION ADMINISTRATION

**STATUTORY ADDENDUM TO
BRIEF OF FEDERAL RESPONDENTS**

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Addendum

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KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter I. Programs and Activities
Part A. Air Quality and Emissions Limitations (Refs & Annos)

42 U.S.C.A. § 7409

§ 7409. National primary and secondary ambient air quality standards

Currentness

(a) Promulgation

(1) The Administrator--

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

Add. 1

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under [section 7408\(c\)](#) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under [section 7408](#) of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with [section 7408](#) of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under [section 7408](#) of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under [section 7408](#) of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

CREDIT(S)

(July 14, 1955, c. 360, Title I, § 109, as added [Pub.L. 91-604](#), § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended [Pub.L. 95-95](#), Title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

[Notes of Decisions \(83\)](#)

42 U.S.C.A. § 7409, 42 USCA § 7409

Current through P.L. 115-140. Also includes P.L. 115-158 to 115-170. Title 26 includes updates from P.L. 115-141, Divisions M, T, and U.

Add. 2

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part B. Aircraft Emission Standards

42 U.S.C.A. § 7573

§ 7573. State standards and controls

Currentness

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 233, as added [Pub.L. 91-604](#), § 11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

Notes of Decisions (2)

42 U.S.C.A. § 7573, 42 USCA § 7573

Current through P.L. 115-140. Also includes P.L. 115-158 to 115-170. Title 26 includes updates from P.L. 115-141, Divisions M, T, and U.

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Add. 3



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

United States Code Annotated
 Title 49. Transportation (Refs & Annos)
 Subtitle VII. Aviation Programs
 Part A. Air Commerce and Safety (Refs & Annos)
 Subpart I. General
 Chapter 401. General Provisions (Refs & Annos)

49 U.S.C.A. § 40103

§ 40103. Sovereignty and use of airspace

Currentness

(a) Sovereignty and public right of transit.--(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) Use of airspace.--(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for--

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

Add. 4

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall--

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in [section 553\(a\)\(1\) of title 5](#), subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) **Foreign aircraft.**--A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in [section 41703](#) of this title.

(d) **Aircraft of armed forces of foreign countries.**--Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) **No exclusive rights at certain facilities.**--A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if--

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

CREDIT(S)

(Added [Pub.L. 103-272](#), § 1(e), July 5, 1994, 108 Stat. 1101.)

Notes of Decisions (68)

49 U.S.C.A. § 40103, 49 USCA § 40103

Current through P.L. 115-140. Also includes P.L. 115-158 to 115-170. Title 26 includes updates from P.L. 115-141, Divisions M, T, and U.

WESTLAW

Code of Federal Regulations
Title 14. Aeronautics and Space
Chapter I. Federal Aviation Administration, Department of Transportation
Subchapter I. Airports
Part 150. Airport Noise Compatibility Planning (Refs & Annos)
Subpart A. General Provisions

§ 150.1 Scope and purpose.

Code of Federal Regulations, Title 14, Aeronautics and Space (Approx. 3 pages)

14 C.F.R. § 150.1

§ 150.1 Scope and purpose.

Currentness

This part prescribes the procedures, standards, and methodology governing the development, submission, and review of airport noise exposure maps and airport noise compatibility programs, including the process for evaluating and approving or disapproving those programs. It prescribes single systems for-- (a) measuring noise at airports and surrounding areas that generally provides a highly reliable relationship between projected noise exposure and surveyed reaction of people to noise; and (b) determining exposure of individuals to noise that results from the operations of an airport. This part also identifies those land uses which are normally compatible with various levels of exposure to noise by individuals. It provides technical assistance to airport operators, in conjunction with other local, State, and Federal authorities, to prepare and execute appropriate noise compatibility planning and implementation programs.

SOURCE: Docket Nos. 16279 and 18691, [46 FR 8338](#), Jan. 26, 1981; [49 FR 49269](#), Dec. 18, 1984; [53 FR 8723](#), March 16, 1988; [54 FR 46724](#), Nov. 7, 1989; Amdt. 150-3, [60 FR 67256](#) Dec. 28, 1995, unless otherwise noted.

AUTHORITY: [49 U.S.C. 106\(g\)](#), [40113](#), [44715](#), [47101](#), [47501-47504](#).

Notes of Decisions (4)

Current through May 10, 2018; [83 FR 21835](#).

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Code of Federal Regulations
Title 14. Aeronautics and Space
Chapter I. Federal Aviation Administration, Department of Transportation
Subchapter I. Airports
Part 150. Airport Noise Compatibility Planning (Refs & Annos)
Subpart A. General Provisions

14 C.F.R. § 150.3

§ 150.3 Applicability.

Currentness

This part applies to the airport noise compatibility planning activities of the operators of “public use airports,” including heliports, as that term is used in section 47501(2) as amended (49 U.S.C. 47501 et seq.) and as defined in section 47102(17) of 49 U.S.C.

Credits

[Amdt. 150–1, 53 FR 8723, March 16, 1988; Doc. No. FAA–2004–19158, Amdt. 150–4, 69 FR 57625, Sept. 24, 2004]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150–3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501–47504.

Notes of Decisions (1)

Current through May 10, 2018; 83 FR 21835.

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Add. 7

Code of Federal Regulations
 Title 14. Aeronautics and Space
 Chapter I. Federal Aviation Administration, Department of Transportation
 Subchapter I. Airports
 Part 150. Airport Noise Compatibility Planning (Refs & Annos)
 Subpart A. General Provisions

14 C.F.R. § 150.5

§ 150.5 Limitations of this part.

Currentness

(a) Pursuant to 49 U.S.C. 47501 et seq., this part provides for airport noise compatibility planning and land use programs necessary to the purposes of those provisions. No submittal of a map, or approval or disapproval, in whole or part, of any map or program submitted under this part is a determination concerning the acceptability or unacceptability of that land use under Federal, State, or local law.

(b) Approval of a noise compatibility program under this part is neither a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

(c) Approval of a noise compatibility program under this part does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action, pursuant to the National Environmental Policy Act (42 U.S.C. 4332 et seq.) and guidelines.

(d) Acceptance of a noise exposure map does not constitute an FAA determination that any specific parcel of land lies within a particular noise contour. Responsibility for interpretation of the effects of noise contours upon adjacent land uses, including the relationship between noise contours and specific properties, rests with the sponsor or with other state or local government.

Credits

[Amdt. 150-4, 69 FR 57625, Sept. 24, 2004]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150-3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501-47504.

Current through May 10, 2018; 83 FR 21835.

Code of Federal Regulations

Title 14. Aeronautics and Space

Chapter I. Federal Aviation Administration, Department of Transportation

Subchapter I. Airports

Part 150. Airport Noise Compatibility Planning (Refs & Annos)

Subpart A. General Provisions

14 C.F.R. § 150.7

§ 150.7 Definitions.

Currentness

As used in this part, unless the context requires otherwise, the following terms have the following meanings.

Airport means any public use airport, including heliports, as defined by the ASNA Act, including: (a) Any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned; (b) any privately owned reliever airport; and (c) any privately owned airport which is determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft, which is used or to be used for public purposes.

Airport noise compatibility program and program mean that program, and all revisions thereto, reflected in documents (and revised documents) developed in accordance with appendix B of this part, including the measures proposed or taken by the airport operator to reduce existing noncompatible land uses and to prevent the introduction of additional noncompatible land uses within the area.

Airport Operator means, the operator of an airport as defined in the ASNA Act.

ASNA Act means [49 U.S.C. 47501 et seq.](#)

Average sound level means the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.

Compatible land use means the use of land that is identified under this part as normally compatible with the outdoor noise environment (or an adequately attenuated noise level reduction for any indoor activities involved) at the location because the yearly day-night average sound level is at or below that identified for that or similar use under appendix A (Table 1) of this part.

Day-night average sound level (DNL) means the 24-hour average sound level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time. The symbol for DNL is L_{dn} .

Noise exposure map means a scaled, geographic depiction of an airport, its noise contours, and surrounding area developed in accordance with section A150.1 of Appendix A of this part, including the accompanying documentation setting forth the required descriptions of forecast aircraft operations at that airport during the fifth calendar year (or later) beginning after submission of the map, together with the ways, if any, those operations will affect the map (including noise contours and the forecast land uses).

Add. 9

Noise level reduction (NLR) means the amount of noise level reduction in decibels achieved through incorporation of noise attenuation (between outdoor and indoor levels) in the design and construction of a structure.

Noncompatible land use means the use of land that is identified under this part as normally not compatible with the outdoor noise environment (or an adequately attenuated noise reduction level for the indoor activities involved at the location) because the yearly day-night average sound level is above that identified for that or similar use under appendix A (Table 1) of this part.

Regional Airports Division Manager means the Airports Division Manager having responsibility for the geographic area in which the airport in question is located.

Restriction affecting flight procedures means any requirement, limitation, or other action affecting the operation of aircraft, in the air or on the ground.

Sound exposure level means the level, in decibels, of the time integral of squared A-weighted sound pressure during a specified period or event, with reference to the square of the standard reference sound pressure of 20 micropascals and a duration of one second.

Yearly day-night average sound level (YDNL) means the 365-day average, in decibels, day-night average sound level. The symbol for YDNL is also L_{dn} .

Credits

[Amdt. 150-1, [53 FR 8724](#), March 16, 1988; [53 FR 9726](#), March 24, 1988; Amdt. 150-2, [54 FR 39295](#), Sept. 25, 1989; Amdt. 150-4, [69 FR 57625](#), Sept. 24, 2004]

SOURCE: Docket Nos. 16279 and 18691, [46 FR 8338](#), Jan. 26, 1981; [49 FR 49269](#), Dec. 18, 1984; [53 FR 8723](#), March 16, 1988; [54 FR 46724](#), Nov. 7, 1989; Amdt. 150-3, [60 FR 67256](#) Dec. 28, 1995, unless otherwise noted.

AUTHORITY: [49 U.S.C. 106\(g\)](#), [40113](#), [44715](#), [47101](#), [47501-47504](#).

Current through May 10, 2018; [83 FR 21835](#).

Code of Federal Regulations
Title 14. Aeronautics and Space
Chapter I. Federal Aviation Administration, Department of Transportation
Subchapter I. Airports
Part 150. Airport Noise Compatibility Planning (Refs & Annos)
Subpart A. General Provisions

14 C.F.R. § 150.9

§ 150.9 Designation of noise systems.

Currentness

For purposes of this part, the following designations apply:

(a) The noise at an airport and surrounding areas covered by a noise exposure map must be measured in A-weighted sound pressure level (L_A) in units of decibels (dBA) in accordance with the specifications and methods prescribed under appendix A of this part.

(b) The exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day-night average sound level (YDNL) calculated in accordance with the specifications and methods prescribed under appendix A of this part.

(c) Uses of computer models to create noise contours must be in accordance with the criteria prescribed under appendix A of this part.

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150-3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501-47504.

Current through May 10, 2018; 83 FR 21835.

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14 C.F.R. § 150.11

§ 150.11 Identification of land uses.

Currentness

For the purposes of this part, uses of land which are normally compatible or noncompatible with various noise exposure levels to individuals around airports must be identified in accordance with the criteria prescribed under appendix A of this part. Determination of land use must be based on professional planning criteria and procedures utilizing comprehensive, or master, land use planning, zoning, and building and site designing, as appropriate. If more than one current or future land use is permissible, determination of compatibility must be based on that use most adversely affected by noise.

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150-3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501-47504.

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14 C.F.R. § 150.13

§ 150.13 Incorporations by reference.

Effective: December 5, 2007

Currentness

(a) General. This part prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated by reference and were approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

(b) Changes to incorporated matter. Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that affects compliance with standards and procedures of this part will be made under 14 CFR part 11 and 1 CFR part 51.

(c) Identification statement. The complete title or description which identifies each published matter incorporated by reference in this part is as follows:

International Electrotechnical Commission (IEC) Publication No. 179, entitled "Precision Sound Level Meters," dated 1973.

(d) Availability for purchase. Published material incorporated by reference in this part may be purchased at the price established by the publisher or distributor at the following mailing addresses.

IEC publications:

(1) The Bureau Central de la Commission Electrotechnique, Internationale, 1, rue de Varembe, Geneva, Switzerland.

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018.

(e) Availability for inspection. A copy of each publication incorporated by reference in this part is available for public inspection at the following locations:

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(1) FAA Office of the Chief Counsel, Rules Docket, AGC-200, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591.

(2) The respective Regional Offices of the Federal Aviation Administration as follows. The most current mailing address, phone numbers, and States covered by each region are available on the FAA's Web site at <http://www.faa.gov/arp/index.cfm?nav=hq>.

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts 01803.

(ii) Eastern Regional Office, Airports Division, 1 Aviation Plaza, Jamaica, NY 11434-4809.

(iii) Southern Regional Office, Federal Aviation Administration, ATTN: ASO-600, P.O. Box 20636, Atlanta, GA 30320-0631.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois 60018.

(v) Central Regional Office, Federal Aviation Administration, ACE-600, 901 Locust, Kansas City, MO 64106-2325.

(vi) Southwest Regional Office, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137-4298.

(vii) Northwest Mountain Regional Office, Federal Aviation Administration, Airports Division, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055-4056.

(viii) Western Pacific Regional Office, 15000 Aviation Boulevard, Hawthorne, California (P.O. Box 92007, Worldway Postal Center, Los Angeles) 90009.

(ix) Alaskan Regional Office, 222 W. 7th Avenue #14, Anchorage, AK 9951.

(3) National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Credits

[Amdt. 150-2, [54 FR 39295](#), Sept. 25, 1989; [69 FR 18803](#), April 9, 2004; Amdt. 150-4, [69 FR 57625](#), Sept. 24, 2004; [72 FR 68475](#), Dec. 5, 2007]

SOURCE: Docket Nos. 16279 and 18691, [46 FR 8338](#), Jan. 26, 1981; [49 FR 49269](#), Dec. 18, 1984; [53 FR 8723](#), March 16, 1988; [54 FR 46724](#), Nov. 7, 1989; Amdt. 150-3, [60 FR 67256](#) Dec. 28, 1995, unless otherwise noted.

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Subpart B. Development of Noise Exposure Maps and Noise Compatibility Programs

14 C.F.R. § 150.21

§ 150.21 Noise exposure maps and related descriptions.

Currentness

(a) Each airport operator may after completion of the consultations and public procedure specified under paragraph (b) of this section submit to the Regional Airports Division Manager five copies of the noise exposure map (or revised map) which identifies each noncompatible land use in each area depicted on the map, as of the date of submission, and five copies of a map each with accompanying documentation setting forth--

(1) The noise exposure based on forecast aircraft operations at the airport for a forecast period that is at least 5 years in the future, beginning after the date of submission (based on reasonable assumptions concerning future type and frequency of aircraft operations, number of nighttime operations, flight patterns, airport layout including any planned airport development, planned land use changes, and demographic changes in the surrounding areas); and

(2) The nature and extent, if any, to which those forecast operations will affect the compatibility and land uses depicted on the map.

(b) Each map, and related documentation submitted under this section must be developed and prepared in accordance with appendix A of this part, or an FAA approved equivalent, and in consultation with states, and public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction is within the L_{dn} 65 dB contour depicted on the map, FAA regional officials, and other Federal officials having local responsibility for land uses depicted on the map. This consultation must include regular aeronautical users of the airport. The airport operator shall certify that it has afforded interested persons adequate opportunity to submit their views, data, and comments concerning the correctness and adequacy of the draft noise exposure map and descriptions of forecast aircraft operations. Each map and revised map must be accompanied by documentation describing the consultation accomplished under this paragraph and the opportunities afforded the public to review and comment during the development of the map. One copy of all written comments received during consultation shall also be filed with the Regional Airports Division Manager.

(c) The Regional Airports Division Manager acknowledges receipt of noise exposure maps and descriptions and indicates whether they are in compliance with the applicable requirements. The Regional Airports Division Manager publishes in the Federal Register a notice of compliance for each such noise exposure map and description, identifying the airport involved. Such notice includes information as to when and where the map and related documentation are available for public inspection.

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(d) The airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map.

(1) If, after submission of a noise exposure map under paragraph (a) of this section, any change in the operation of the airport would create any “substantial, new noncompatible use” in any area depicted on the map beyond that which is forecast for a period of at least five years after the date of submission, the airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map. A change in the operation of an airport creates a substantial new noncompatible use if that change results in an increase in the yearly day-night average sound level of 1.5 dB or greater in either a land area which was formerly compatible but is thereby made noncompatible under Appendix A (Table 1), or in a land area which was previously determined to be noncompatible under that Table and whose noncompatibility is now significantly increased.

(2) If, after submission of a noise exposure map under paragraph (a) of this section, any change in the operation of the airport would significantly reduce noise over existing noncompatible uses that is not reflected in either the existing conditions or forecast noise exposure map on file with the FAA, the airport operator shall, in accordance with this section, promptly prepare and submit a revised noise exposure map. A change in the operation of the airport creates a significant reduction in noise over existing noncompatible uses if that change results in a decrease in the yearly day-night average sound level of 1.5 dB or greater in a land area which was formerly noncompatible but is thereby made compatible under Appendix A (Table 1).

(3) Such updating of the map shall include a reassessment of those areas excluded under section A150.101(e)(5) of Appendix A because of high ambient noise levels.

(4) If the forecast map is based on assumptions involving recommendations in a noise compatibility program which are subsequently disapproved by the FAA, a revised map must be submitted if revised assumptions would create a substantial, new noncompatible use not indicated on the forecast map. Revised noise exposure maps are subject to the same requirements and procedures as initial submissions of noise exposure maps under this part.

(e) Each map, or revised map, and description of consultation and opportunity for public comment, submitted to the FAA, must be certified as true and complete under penalty of 18 U.S.C. 1001.

(f)(1) Title 49, section 47506 provides that no person who acquires property or an interest therein after the date of enactment of the Act in an area surrounding an airport with respect to which a noise exposure map has been submitted under section 47503 of the Act shall be entitled to recover damages with respect to the noise attributable to such airport if such person had actual or constructive knowledge of the existence of such noise exposure map unless, in addition to any other elements for recovery of damages, such person can show that--

¹ No person who acquires property or an interest therein after the date of enactment of the Act in an area surrounding an airport with respect to which a noise exposure map has been submitted under section 103 of the Act shall be entitled to recover damages with respect to the noise attributable to such airport if such person had actual or constructive knowledge of the existence of such noise exposure map unless, in addition to any other elements for recovery of damages, such person can show that--

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- (i) A significant change in the type or frequency of aircraft operations at the airport; or
- (ii) A significant change in the airport layout; or
- (iii) A significant change in the flight patterns; or
- (iv) A significant increase in nighttime operations; occurred after the date of the acquisition of such property or interest therein and that the damages for which recovery is sought have resulted from any such change or increase.”

(2) Title 49 section 47506(b) further provides:

That for this purpose, “constructive knowledge” shall be imputed, at a minimum, to any person who acquires property or an interest therein in an area surrounding an airport after the date of enactment of the Act if--

- (i) Prior to the date of such acquisition, notice of the existence of a noise exposure map for such area was published at least three times in a newspaper of general circulation in the county in which such property is located; or
- (ii) A copy of such noise exposure map is furnished to such person at the time of such acquisition.

(g) For this purpose, the term significant in paragraph (f) of this section means that change or increase in one or more of the four factors which results in a “substantial new noncompatible use” as defined in § 150.21(d), affecting the property in issue. Responsibility for applying or interpreting this provision with respect to specific properties rests with local government.

Credits

[50 FR 5063, Feb. 6, 1985; Amdt. 150–2, 54 FR 39295, Sept. 25, 1989; Amdt. 150–4, 69 FR 57626, Sept. 24, 2004]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150–3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501–47504.

Current through May 10, 2018; 83 FR 21835.

Footnotes

1 So in Official CFR; Probably should be removed. see 69 FR 57622.

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14 C.F.R. § 150.23

§ 150.23 Noise compatibility programs.

Currentness

(a) Any airport operator who has submitted an acceptable noise exposure map under § 150.21 may, after FAA notice of acceptability and other consultation and public procedure specified under paragraphs (b) and (c) of this section, as applicable, submit to the Regional Airports Division Manager five copies of a noise compatibility program.

(b) An airport operator may submit the noise compatibility program at the same time as the noise exposure map. In this case, the Regional Airports Division Manager will not begin the statutory 180-day review period (for the program) until after FAA reviews the noise exposure map and finds that it and its supporting documentation are in compliance with the applicable requirements.

(c) Each noise compatibility program must be developed and prepared in accordance with appendix B of this part, or an FAA approved equivalent, and in consultation with FAA regional officials, the officials of the state and of any public agencies and planning agencies whose area, or any portion or whose area, of jurisdiction within the L_{dn} 65 dB noise contours is depicted on the noise exposure map, and other Federal officials having local responsibility of land uses depicted on the map. Consultation with FAA regional officials shall include, to the extent practicable, informal agreement from FAA on proposed new or modified flight procedures. For air carrier airports, consultation must include any air carriers and, to the extent practicable, other aircraft operators using the airport. For other airports, consultation must include, to the extent practicable, aircraft operators using the airport.

(d) Prior to and during the development of a program, and prior to submission of the resulting draft program to the FAA, the airport operator shall afford adequate opportunity for the active and direct participation of the States, public agencies and planning agencies in the areas surrounding the airport, aeronautical users of the airport, the airport operator, and the general public to submit their views, data, and comments on the formulation and adequacy of that program. Prior to submitting the program to the FAA, the airport operator shall also provide notice and the opportunity for a public hearing.

(e) Each noise compatibility program submitted to the FAA must consist of at least the following:

(1) A copy of the noise exposure map and its supporting documentation as found in compliance with the applicable requirements by the FAA, per § 150.21(c).

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(2) A description and analysis of the alternative measures considered by the airport operator in developing the program, together with a discussion of why each rejected measure was not included in the program.

(3) Program measures proposed to reduce or eliminate present and future noncompatible land uses and a description of the relative contribution of each of the proposed measures to the overall effectiveness of the program.

(4) A description of public participation and the consultation with officials of public agencies and planning agencies in areas surrounding the airport, FAA regional officials and other Federal officials having local responsibility for land uses depicted on the map, any air carriers and other users of the airport.

(5) The actual or anticipated effect of the program on reducing noise exposure to individuals and noncompatible land uses and preventing the introduction of additional noncompatible uses within the area covered by the noise exposure map. The effects must be based on expressed assumptions concerning the type and frequency of aircraft operations, number of nighttime operations, flight patterns, airport layout including planned airport development, planned land use changes, and demographic changes within the L_{dn} 65 dB noise contours.

(6) A description of how the proposed future actions may change any noise control or compatibility plans or actions previously adopted by the airport proprietor.

(7) A summary of the comments at any public hearing on the program and a copy of all written material submitted to the operator under paragraphs (c) and (d) of this section, together with the operator's response and disposition of those comments and materials to demonstrate the program is feasible and reasonably consistent with obtaining the objectives of airport noise compatibility planning under this part.

(8) The period covered by the program, the schedule for implementation of the program, the persons responsible for implementation of each measure in the program, and, for each measure, documentation supporting the feasibility of implementation, including any essential governmental actions, costs, and anticipated sources of funding, that will demonstrate that the program is reasonably consistent with achieving the goals of airport noise compatibility planning under this part.

(9) Provision for revising the program if made necessary by revision of the noise exposure map.

Credits

[50 FR 5064, Feb. 6, 1985; Amdt. 150–2, 54 FR 39295, Sept. 25, 1989; Amdt. 150–4, 69 FR 57626, Sept. 24, 2004]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150–3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501–47504.

Current through May 10, 2018; 83 FR 21835.

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Subpart C. Evaluations and Determinations of Effects of Noise Compatibility Programs

14 C.F.R. § 150.31

§ 150.31 Preliminary review: Acknowledgments.

Currentness

(a) Upon receipt of a noise compatibility program submitted under § 150.23, the Regional Airports Division Manager acknowledges to the airport operator receipt of the program and conducts a preliminary review of the submission.

(b) If, based on the preliminary review, the Regional Airports Division Manager finds that the submission does not conform to the requirements of this part, he disapproves and returns the unacceptable program to the airport operator for reconsideration and development of a program in accordance with this part.

(c) If, based on the preliminary review, the Regional Airports Division Manager finds that the program conforms to the requirements of this part, the Regional Airports Division Manager publishes in the Federal Register a notice of receipt of the program for comment which indicates the following:

(1) The airport covered by the program, and the date of receipt.

(2) The availability of the program for examination in the offices of the Regional Airports Division Manager and the airport operator.

(3) That comments on the program are invited and, will be considered by the FAA.

(d) The date of signature of the published notice of receipt starts the 180-day approval period for the program.

Credits

[Amdt. 150-2, 54 FR 39295, Sept. 25, 1989]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150-3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501-47504.

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Subpart C. Evaluations and Determinations of Effects of Noise Compatibility Programs

14 C.F.R. § 150.33

§ 150.33 Evaluation of programs.

Currentness

(a) The FAA conducts an evaluation of each noise compatibility program and, based on that evaluation, either approves or disapproves the program. The evaluation includes consideration of proposed measures to determine whether they--

(1) May create an undue burden on interstate or foreign commerce (including unjust discrimination);

(2) Are reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and

(3) Include the use of new or modified flight procedures to control the operation of aircraft for purposes of noise control, or affect flight procedures in any way.

(b) The evaluation may also include an evaluation of those proposed measures to determine whether they may adversely affect the exercise of the authority and responsibilities of the Administrator under the Federal Aviation Act of 1958, as amended.

(c) To the extent considered necessary, the FAA may--

(1) Confer with the airport operator and other persons known to have information and views material to the evaluation;

(2) Explore the objectives of the program and the measures, and any alternative measures, for achieving the objectives.

(3) Examine the program for developing a range of alternatives that would eliminate the reasons, if any, for disapproving the program.

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(4) Convene an informal meeting with the airport operator and other persons involved in developing or implementing the program for the purposes of gathering all facts relevant to the determination of approval or disapproval of the program and of discussing any needs to accommodate or modify the program as submitted.

(d) If requested by the FAA, the airport operator shall furnish all information needed to complete FAA's review under (c).

(e) An airport operator may, at any time before approval or disapproval of a program, withdraw or revise the program. If the airport operator withdraws or revises the program or indicates to the Regional Airports Division Manager, in writing, the intention to revise the program, the Regional Airports Division Manager terminates the evaluation and notifies the airport operator of that action. That termination cancels the 180-day review period. The FAA does not evaluate a second program for any airport until any previously submitted program has been withdrawn or a determination on it is issued. A new evaluation is commenced upon receipt of a revised program, and a new 180-day approval period is begun, unless the Regional Airports Division Manager finds that the modification made, in light of the overall revised program, can be integrated into the unmodified portions of the revised program without exceeding the original 180-day approval period or causing undue expense to the government.

Credits

[Amdt. 150-2, 54 FR 39295, Sept. 25, 1989]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150-3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501-47504.

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Subpart C. Evaluations and Determinations of Effects of Noise Compatibility Programs

14 C.F.R. § 150.35

§ 150.35 Determinations; publications; effectivity.

Currentness

(a) The FAA issues a determination approving or disapproving each airport noise compatibility program (and revised program). Portions of a program may be individually approved or disapproved. No conditional approvals will be issued. A determination on a program acceptable under this part is issued within 180 days after the program is received under § 150.23 of this part or it may be considered approved, except that this time period may be exceeded for any portion of a program relating to the use of flight procedures for noise control purposes. A determination on portions of a program covered by the exceptions to the 180-day review period for approval will be issued within a reasonable time after receipt of the program. Determinations relating to the use of any flight procedure for noise control purposes may be issued either in connection with the determination on other portions of the program or separately. Except as provided by this paragraph, no approval of any noise compatibility program, or any portion of a program, may be implied in the absence of the FAA's express approval.

(b) The Administrator approves programs under this part, if--

(1) It is found that the program measures to be implemented would not create an undue burden on interstate or foreign commerce (including any unjust discrimination) and are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and of preventing the introduction of additional noncompatible land uses;

(2) The program provides for revision if made necessary by the revision of the noise map; and

(3) Those aspects of programs relating to the use of flight procedures for noise control can be implemented within the period covered by the program and without--

(i) Reducing the level of aviation safety provided;

(ii) Derogating the requisite level of protection for aircraft, their occupants and persons and property on the ground;

(iii) Adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems; or

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- (iv) Adversely affecting any other powers and responsibilities of the Administrator prescribed by law or any other program, standard, or requirement established in accordance with law.
- (c) When a determination is issued, the Regional Airports Division Manager notifies the airport operator and publishes a notice of approval or disapproval in the Federal Register identifying the nature and extent of the determination.
- (d) Approvals issued under this part for a program or portion thereof become effective as specified therein and may be withdrawn when one of the following occurs:
 - (1) The program or portion thereof is required to be revised under this part or under its own terms, and is not so revised;
 - (2) If a revision has been submitted for approval, a determination is issued on the revised program or portion thereof, that is inconsistent with the prior approval.
 - (3) A term or condition of the program, or portion thereof, or its approval is violated by the responsible government body.
 - (4) A flight procedure or other FAA action upon which the approved program or portion thereof is dependent is subsequently disapproved, significantly altered, or rescinded by the FAA.
 - (5) The airport operator requests rescission of the approval.
 - (6) Impacts on flight procedures, air traffic management, or air commerce occur which could not be foreseen at the time of approval.

A determination may be sooner rescinded or modified for cause with at least 30 days written notice to the airport operator of the FAA's intention to rescind or modify the determination for the reasons stated in the notice. The airport operator may, during the 30-day period, submit to the Regional Airports Division Manager for consideration any reasons and circumstances why the determination should not be rescinded or modified on the basis stated in the notice of intent. Thereafter, the FAA either rescinds or modifies the determination consistent with the notice or withdraws the notice of intent and terminates the action.

- (e) Determinations may contain conditions which must be satisfied prior to implementation of any portion of the program relating to flight procedures affecting airport or aircraft operations.
- (f) Noise exposure maps for current and forecast year map conditions that are submitted and approved with noise compatibility programs are considered to be the new FAA accepted noise exposure maps for purposes of part 150.

Credits

[Amdt. 150-2, 54 FR 39295, Sept. 25, 1989; Amdt. 150-4, 69 FR 57626, Sept. 24, 2004]

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SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150-3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501-47504.

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Appendix A to Part 150—Noise Exposure Maps

Currentness

Part A—General

Sec. A150.1 Purpose.

Sec. A150.3 Noise descriptors.

Sec. A150.5 Noise measurement procedures and equipment.

Part B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land usages.

Sec. A150.103 Use of computer prediction model.

Sec. A150.105 Identification of public agencies and planning agencies.

Part C—Mathematical Descriptions

Sec. A150.201 General.

Sec. A150.203 Symbols.

Sec. A150.205 Mathematical computations.

Part A—General

Sec. A150.1 Purpose.

(a) This appendix establishes a uniform methodology for the development and preparation of airport noise exposure maps. That methodology includes a single system of measuring noise at airports for which there is a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise along with a separate single system for determining the exposure of individuals to noise. It also identifies land uses which, for the purpose of this part are considered to be compatible with various exposures of individuals to noise around airports.

(b) This appendix provides for the use of the FAA's Integrated Noise Model (INM) or an FAA approved equivalent, for developing standardized noise exposure maps and predicting noise impacts. Noise monitoring may be utilized by

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airport operators for data acquisition and data refinement, but is not required by this part for the development of noise exposure maps or airport noise compatibility programs. Whenever noise monitoring is used, under this part, it should be accomplished in accordance with Sec. A150.5 of this appendix.

Sec. A150.3 Noise descriptors.

(a) Airport Noise Measurement. The A-Weighted Sound Level, measured, filtered and recorded in accordance with Sec. A150.5 of this appendix, must be employed as the unit for the measurement of single event noise at airports and in the areas surrounding the airports.

(b) Airport Noise Exposure. The yearly day-night average sound level (YDNL) must be employed for the analysis and characterization of multiple aircraft noise events and for determining the cumulative exposure of individuals to noise around airports.

Sec. A150.5 Noise measurement procedures and equipment.

(a) Sound levels must be measured or analyzed with equipment having the “A” frequency weighting, filter characteristics, and the “slow response” characteristics as defined in International Electrotechnical Commission (IEC) Publication No. 179, entitled “Precision Sound Level Meters” as incorporated by reference in part 150 under § 150.11. For purposes of this part, the tolerances allowed for general purpose, type 2 sound level meters in IEC 179, are acceptable.

(b) Noise measurements and documentation must be in accordance with accepted acoustical measurement methodology, such as those described in American National Standards Institute publication ANSI S1.13, dated 1971 as revised 1979, entitled “ANS—Methods for the Measurement of Sound Pressure Levels”; ARP No. 796, dated 1969, entitled “Measurement of Aircraft Exterior Noise in the Field”; “Handbook of Noise Measurement,” Ninth Ed. 1980, by Arnold P.G. Peterson; or “Acoustic Noise Measurement,” dated Jan., 1979, by J.R. Hassell and K. Zaveri. For purposes of this part, measurements intended for comparison to a State or local standard or with another transportation noise source (including other aircraft) must be reported in maximum A-weighted sound levels (L_{AM}); for computation or validation of the yearly day-night average level (L_{dn}), measurements must be reported in sound exposure level (L_{AE}), as defined in Sec. A150.205 of this appendix.

Part B—Noise Exposure Map Development

Sec. A150.101 Noise contours and land usages.

(a) To determine the extent of the noise impact around an airport, airport proprietors developing noise exposure maps in accordance with this part must develop L_{dn} contours. Continuous contours must be developed for YDNL levels of 65, 70, and 75 (additional contours may be developed and depicted when appropriate). In those areas where YDNL values are 65 YDNL or greater, the airport operator shall identify land uses and determine land use compatibility in accordance with the standards and procedures of this appendix.

(b) Table 1 of this appendix describes compatible land use information for several land uses as a function of YDNL values. The ranges of YDNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured YDNL values at a site with the values given. Adjustments or modifications of the descriptions of the land-use categories may be desirable after consideration of specific local conditions.

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(c) Compatibility designations in Table 1 generally refer to the major use of the site. If other uses with greater sensitivity to noise are permitted by local government at a site, a determination of compatibility must be based on that use which is most adversely affected by noise. When appropriate, noise level reduction through incorporation of sound attenuation into the design and construction of a structure may be necessary to achieve compatibility.

(d) For the purpose of compliance with this part, all land uses are considered to be compatible with noise levels less than L_{dn} 65 dB. Local needs or values may dictate further delineation based on local requirements or determinations.

(e) Except as provided in (f) below, the noise exposure maps must also contain and identify:

(1) Runway locations.

(2) Flight tracks.

(3) Noise contours of L_{dn} 65, 70, and 75 dB resulting from aircraft operations.

(4) Outline of the airport boundaries.

(5) Noncompatible land uses within the noise contours, including those within the L_{dn} 65 dB contours. (No land use has to be identified as noncompatible if the self-generated noise from that use and/or the ambient noise from other nonaircraft and nonairport uses is equal to or greater than the noise from aircraft and airport sources.)

(6) Location of noise sensitive public buildings (such as schools, hospitals, and health care facilities), and properties on or eligible for inclusion in the National Register of Historic Places.

(7) Locations of any aircraft noise monitoring sites utilized for data acquisition and refinement procedures.

(8) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

(9) Depiction of the required noise contours over a land use map of a sufficient scale and quality to discern streets and other identifiable geographic features.

(f) Notwithstanding any other provision of this part, noise exposure maps prepared in connection with studies which were either Federally funded or Federally approved and which commenced before October 1, 1981, are not required to be modified to contain the following items:

(1) Flight tracks depicted on the map.

(2) Use of ambient noise to determine land use compatibility.

(3) The L_{dn} 70 dB noise contour and data related to L_{dn} 70 dB contour. When determinations on land use compatibility using Table 1 differ between L_{dn} 65–70 dB and the L_{dn} 70–75 dB, determinations should either use the more conservative L_{dn} 70–75 dB column or reflect determinations based on local needs and values.

(4) Estimates of the number of people residing within the L_{dn} 65, 70, and 75 dB contours.

Table 1—LAND USE COMPATIBILITY^A WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

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Land use	Yearly day-night average sound level (L _{dn}) in decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
RESIDENTIAL						
Residential, other than mobile homes and transient lodgings.....	Y	N ¹	N ¹	N	N	N
Mobile home parks.....	Y	N	N	N	N	N
Transient lodgings.....	Y	N ¹	N ¹	N ¹	N	N
PUBLIC USE						
Schools.....	Y	N ¹	N ¹	N	N	N
Hospitals and nursing homes.....	Y	25	30	N	N	N
Churches, auditoriums, and concert halls.....	Y	25	30	N	N	N
Governmental services.....	Y	Y	25	30	N	N
Transportation.....	Y	Y	Y ²	Y ³	Y ⁴	Y ⁴
Parking.....	Y	Y	Y ²	Y ³	Y ⁴	N
COMMERCIAL USE						
Offices, business and professional.....	Y	Y	25	30	N	N
Wholesale and retail—building materials, hardware and farm equipment.....	Y	Y	Y ²	Y ³	Y ⁴	N
Retail trade—general.....	Y	Y	25	30	N	N
Utilities.....	Y	Y	Y ²	Y ³	Y ⁴	N
Communication.....	Y	Y	25	30	N	N
MANUFACTURING AND PRODUCTION						
Manufacturing, general.....	Y	Y	Y ²	Y ³	Y ⁴	N
Photographic and optical.....	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry.....	Y	Y ⁶	Y ⁷	Y ⁸	Y ⁸	Y ⁸
Livestock farming and breeding.....	Y	Y ⁶	Y ⁷	N	N	N
Mining and fishing, resource production and extraction..	Y	Y	Y	Y	Y	Y
RECREATIONAL						

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Outdoor sports arenas and spectator sports.....	Y	Y ⁵	Y ⁵	N	N	N
Outdoor music shells, amphitheaters.....	Y	N	N	N	N	N
Nature exhibits and zoos.....	Y	Y	N	N	N	N
Amusements, parks, resorts and camps.....	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation.....	Y	Y	25	30	N	N

Numbers in parentheses refer to notes.

Sec. A150.103 Use of computer prediction model.

(a) The airport operator shall acquire the aviation operations data necessary to develop noise exposure contours using an FAA approved methodology or computer program, such as the Integrated Noise Model (INM) for airports or the Heliport Noise Model (HNM) for heliports. In considering approval of a methodology or computer program, key factors include the demonstrated capability to produce the required output and the public availability of the program or methodology to provide interested parties the opportunity to substantiate the results.

(b) Except as provided in paragraph (c) of this section, the following information must be obtained for input to the calculation of noise exposure contours:

(1) A map of the airport and its environs at an adequately detailed scale (not less than 1 inch to 2,000 feet) indicating runway length, alignments, landing thresholds, takeoff start-of-roll points, airport boundary, and flight tracks out to at least 30,000 feet from the end of each runway.

(2) Airport activity levels and operational data which will indicate, on an annual average-daily-basis, the number of aircraft, by type of aircraft, which utilize each flight track, in both the standard daytime (0700–2200 hours local) and nighttime (2200–0700 hours local) periods for both landings and takeoffs.

(3) For landings—glide slopes, glide slope intercept altitudes, and other pertinent information needed to establish approach profiles along with the engine power levels needed to fly that approach profile.

(4) For takeoffs—the flight profile which is the relationship of altitude to distance from start-of-roll along with the engine power levels needed to fly that takeoff profile; these data must reflect the use of noise abatement departure procedures and, if applicable, the takeoff weight of the aircraft or some proxy for weight such as stage length.

(5) Existing topographical or airspace restrictions which preclude the utilization of alternative flight tracks.

(6) The government furnished data depicting aircraft noise characteristics (if not already a part of the computer program's stored data bank).

(7) Airport elevation and average temperature.

(c) For heliports, the map scale required by paragraph (b)(1) of this section shall not be less than 1 inch to 2,000 feet and shall indicate heliport boundaries, takeoff and landing pads, and typical flight tracks out to at least 4,000 feet horizontally from the landing pad. Where these flight tracks cannot be determined, obstructions or other limitations on flight tracks in and out of the heliport shall be identified within the map areas out to at least 4,000 feet horizontally from the landing pad. For static operation (hover), the helicopter type, the number of daily operations based on an annual average, and

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the duration in minutes of the hover operation shall be identified. The other information required in paragraph (b) shall be furnished in a form suitable for input to the HNM or other FAA approved methodology or computer program.

Sec. A150.105 Identification of public agencies and planning agencies.

(a) The airport proprietor shall identify each public agency and planning agency whose jurisdiction or responsibility is either wholly or partially within the L_{dn} 65 dB boundary.

(b) For those agencies identified in (a) that have land use planning and control authority, the supporting documentation shall identify their geographic areas of jurisdiction.

Part C—Mathematical Descriptions

Sec. A150.201 General.

The following mathematical descriptions provide the most precise definition of the yearly day-night average sound level (L_{dn}), the data necessary for its calculation, and the methods for computing it.

Sec. A150.203 Symbols.

The following symbols are used in the computation of L_{dn}:

Measure (in dB)	Symbol
Average Sound Level, During Time T.....	L _T
Day-Night Average Sound Level (individual day).....	L _{dni}
Yearly Day-Night Average Sound Level.....	L _{dn}
Sound Exposure Level.....	L _{AE}

Sec. A150.205 Mathematical computations.

(a) Average sound level must be computed in accordance with the following formula:

$$L_T = 10 \log_{10} \left[\frac{1}{T} \int_0^T 10^{L_A(t)/10} dt \right] \quad (1)$$

where T is the length of the time period, in seconds, during which the average is taken; L_A(t) is the instantaneous time varying A-weighted sound level during the time period T.

Note: When a noise environment is caused by a number of identifiable noise events, such as aircraft flyovers, average sound level may be conveniently calculated from the sound exposure levels of the individual events occurring within a time period T:

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$$L_T = 10 \log_{10} \left[\frac{1}{T} \sum_{i=1}^n 10^{L_{AEi}/10} \right] \quad (2)$$

where L_{AEi} is the sound exposure level of the i -th event, in a series of n events in time period T , in seconds.

Note: When T is one hour, L_T is referred to as one-hour average sound level.

(b) Day-night average sound level (individual day) must be computed in accordance with the following formula:

$$L_{dn} = 10 \log_{10} \left[\frac{1}{86400} \left(\int_{0000}^{0700} 10^{[L_A(t)+10]/10} dt + \int_{0700}^{2200} 10^{L_A(t)/10} dt + \int_{2200}^{2400} 10^{[L_A(t)+10]/10} dt \right) \right] \quad (3)$$

Time is in seconds, so the limits shown in hours and minutes are actually interpreted in seconds. It is often convenient to compute day-night average sound level from the one-hour average sound levels obtained during successive hours.

(c) Yearly day-night average sound level must be computed in accordance with the following formula:

$$L_{dn} = 10 \log_{10} \frac{1}{365} \sum_{i=1}^{365} 10^{L_{dni}/10} \quad (4)$$

where L_{dni} is the day-night average sound level for the i -th day out of one year.

(d) Sound exposure level must be computed in accordance with the following formula:

$$L_{AE} = 10 \log_{10} \left(\frac{1}{t_0} \int_{t_1}^{t_2} 10^{L_A(t)/10} dt \right) \quad (5)$$

where t_0 is one second and $L_A(t)$ is the time-varying A-weighted sound level in the time interval t_1 to t_2 .

The time interval should be sufficiently large that it encompasses all the significant sound of a designated event.

The requisite integral may be approximated with sufficient accuracy by integrating $L_A(t)$ over the time interval during which $L_A(t)$ lies within 10 decibels of its maximum value, before and after the maximum occurs.

Credits

[50 FR 5064, Feb. 6, 1985; Amdt. 150–1, 53 FR 8724, March 16, 1988; 68 FR 6608, Feb. 10, 2003; Amdt. 150–4, 69 FR 57626, Sept. 24, 2004; 69 FR 61438, Oct. 18, 2004]

SOURCE: Docket Nos. 16279 and 18691, 46 FR 8338, Jan. 26, 1981; 49 FR 49269, Dec. 18, 1984; 53 FR 8723, March 16, 1988; 54 FR 46724, Nov. 7, 1989; Amdt. 150–3, 60 FR 67256 Dec. 28, 1995, unless otherwise noted.

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AUTHORITY: 49 U.S.C. 106(g), 40113, 44715, 47101, 47501–47504.

Current through May 10, 2018; 83 FR 21835.

Footnotes

- a The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under part 150 are not intended to substitute federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM=Standard Land Use Coding Manual.

Y (Yes)=Land Use and related structures compatible without restrictions.

N (No)=Land Use and related structures are not compatible and should be prohibited.

NLR=Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30, or 35=Land use and related structures generally compatible; measures to achieve NLR of 25, 30, or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

(8) Residential buildings not permitted.

Code of Federal Regulations
 Title 40. Protection of Environment
 Chapter I. Environmental Protection Agency (Refs & Annos)
 Subchapter C. Air Programs
 Part 93. Determining Conformity of Federal Actions to State or Federal Implementation Plans (Refs & Annos)
 Subpart B. Determining Conformity of General Federal Actions to State or Federal Implementation Plans (Refs & Annos)

40 C.F.R. § 93.150

§ 93.150 Prohibition.

Effective: July 6, 2010

Currentness

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) [Reserved by 75 FR 17272]

(d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the Clean Air Act (Act).

(e) If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

Credits

[58 FR 67442, Dec. 21, 1993; 75 FR 17272, April 5, 2010]

SOURCE: 58 FR 62234, Nov. 24, 1993; 58 FR 63253, Nov. 30, 1993; 60 FR 40100, Aug. 7, 1995, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401-7671q.

Notes of Decisions (2)

Current through May 10, 2018; 83 FR 21835.

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Code of Federal Regulations
Title 40. Protection of Environment
Chapter V. Council on Environmental Quality
Part 1508. Terminology and Index (Refs & Annos)

40 C.F.R. § 1508.13

§ 1508.13 Finding of no significant impact.

Currentness

Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514 (Mar. 5, 1970, as amended by Executive Order 11991, May 24, 1977).

Notes of Decisions (482)

Current through May 10, 2018; 83 FR 21835.

End of Document

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