Aircraft Noise and Emissions Legislation in the Next Congress: Priorities, Perspectives, and Predictions

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How did we get here?

New noise annoyance data

- New foundation for all legal discussions of noise
- Pressure on regulators (FAA) and legislators (Congress) and sponsors (airports) to adapt to findings from *Neighborhood Environmental Survey*
- Does it remain legally permissible to continue to rely on 65 dB DNL threshold?
Now what?
The long and winding road . . .

- Tweaks and Flexibility
- New Regulatory Structure
- No Change
- Congress
- Neighborhood Environmental Survey
Legal considerations

- The 65 dB DNL threshold was developed for a narrow purpose in the 1970s-80s
- Acceptance evolved, gradually becoming more widespread
- Use of 65 dB DNL threshold is today enshrined in law, regulations, policies, guidance, past practice (legal precedents)
- Changes to those legal documents must be –
  - Transparent
  - Thoughtful
  - Collaborative (public comment)
In the meantime....?
Some reasonable options (FAA only)

- Revisions agency-wide in metric (DNL) or threshold (65 dB DNL)
- Selected revisions –
  - NEPA/ Section 4(f)/ NHPA
  - Part 150
  - Part 161
  - Airport revenue use
- Just FAA or government wide
  (EPA, HUD, VA, other DOT modal agencies)
Triggers/policy considerations

- New administration focused on climate change and environmental justice
- Will public, Congress accept more studies?
- Pressure to act (now)
- Transition – what does that look like?
- Potential legal challenges to continued use of 65 dB DNL
  - FAA NEPA documents (arbitrary and capricious?)
  - State law (California especially)
Implications of changes

- NEPA documentation (scope)
- State environmental reviews
- Section 4(f) determinations (parks, historic properties)
- Part 150 mitigation funding
- Airspace redesign
- Federal funding for other mitigation (AIP eligibility)
- Revenue use by airport sponsors (outside 65 dB DNL)
- Noise reporting generally
Congressional interest: statutory revisions
Hot Congressional topics

- Metroplex and NextGen (appropriateness of DNL metric generally)
- Thresholds
- Local flexibility on restrictions (revise ANCA)
- Studies, studies, studies
  - Another FICUN (1979); FICON (1991); FICAN (1993)
  - Independent review?
  - Blue ribbon commission?
Reference materials
Legal Authority – Key statutes

  - FAA may prescribe standards for measurement and regulation of aircraft noise

- **Aviation Safety and Noise Abatement Act of 1979 (ASNA) (49 U.S.C. 47501 et seq.)**
  - FAA may regulate “air noise compatibility planning”
  - FAA may fund airport projects in an approved noise compatibility program
  - FAA may establish standards for measuring noise impacts

- **Airport Noise and Capacity Act of 1990 (ANCA) (49 U.S.C. 47521 et seq.)**
  - Phase-out of Stage 2 aircraft > 75,000 pounds
  - Limits on any restrictions of Stage 2 and Stage 3 aircraft

- **FAA Modernization and Reform Act of 2012 (P.L. 112-95)**
  - Ban on almost all Stage 2 aircraft after December 31, 2015

- **FAA Reauthorization Act of 2018**
  - Section 163 limits FAA authority over considerable airport land uses
Legal Authority – Key regulations

- **Part 36**
  - Noise Standards: Aircraft Type and Airworthiness Certification (1969, as amended)

- **Part 91, Subpart I**
  - Operating Noise Limits (1976, as amended)

- **Part 150**
  - Airport Noise Compatibility Planning (1984, as amended)

- **Part 161**
  - Notice and Approval of Noise and Access Restrictions (1991)