

From: Vince Mestre
To: Port of Seattle
Re: FAA Authority to change the 65 DNL noise contour

At a recent StART Aviation Noise Working Group meeting, I shared my professional opinion that it would take Congressional action to change the FAA's 65 DNL noise contour standard. Below, please find additional details that informed my thinking on this topic.

Background

1. First here is a quote from "A Guide to the Rulemaking Process" Prepared by the Office of the Federal Register:

"Agencies get their authority to issue regulations from laws (statutes) enacted by Congress. In some cases, the President may delegate existing Presidential authority to an agency. Typically, when Congress passes a law to create an agency, it grants that agency general authority to regulate certain activities within our society. Congress may also pass a law that more specifically directs an agency to solve a particular problem or accomplish a certain goal."

2. There are at least three places where 65 DNL is spelled out specifically in federal regulations and federal orders. These are as follows:

2.1. Code of Federal Regulation (CFR) 14 Part 161. This Federal Aviation Regulation (FAR) describes the process from which any noise abatement rules may be required to show a cost benefit analysis prior to any approval or implementation. The rules dictate that all cost benefit analyses are limited to only the benefits within the 65 DNL contour. The authority for FAR Part 16 is spelled out in the Airport Noise and Capacity Act (ANCA) of 1990. In this act Congress was vague about the computation of benefits, but Part 161 is specific, "Airport noise study area means that area surrounding the airport within the noise contour selected by the applicant for study and must include the noise contours required to be developed for noise exposure maps specified in 14 CFR part 150." This reference to Part 150 means an applicant must use 65 DNL as the boundary for calculating cost benefits for residential areas.

2.2 CFR 14 Part 150. This FAR is the implementation of the Aviation Safety and Noise Abatement Act (ASNA) recodified 1978. FAR Part 150 includes all the requirements for a Part 150 Airport Noise Compatibility Program. It contains the noise/land use guideline widely cited as defining 65 DNL as compatible with residential land use. ASNA gave FAA the authority to define the noise metric, "Sec. 47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure. After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies that the Secretary of Transportation considers appropriate, the Secretary shall by regulation - (1) establish a single system of measuring noise that -
..."

2.3 FAA Order 1050.1F. This order dictates how the FAA implements the National Environmental Policy Act (NEPA) of 1969. The Act is a declaration of National environmental policy. It designates the Council of Environmental Quality (CEQ), an Executive Branch council, to develop the specific guidelines for agencies to implement NEPA. Order 1050.1F is that implementation for FAA and within it contains 65 DNL as the boundary for measuring aviation noise impact on residential uses.

Summary Findings

The question is whether the FAA can substantially change any of their regulations or orders without having Congress change the enabling legislation. The general opinion has been that changing the 65 DNL policy would require a change in FAR Part 150 at a minimum as that is the source used for other regulations and orders. ASNA language says the FAA shall adopt a metric based on other agency and state and interstate consultation. Changing the policy is not addressed in ASNA or Part 150. The thinking has been that to get FAA to change policy Congress would need to modify ASNA to cause a change in the noise policy. There may be differing opinions beyond the scope of our studies, but it is clear that if Congress acted, the FAA would have to modify policies accordingly.