



February 23, 2016

Open Letter to:

**Members of the U.S. House Transportation & Infrastructure Committee
Members of the U.S. Senate Commerce Committee
Members of the Quiet Skies Caucus**

**Re: The Need for Enforceable Noise Standards to be Included in the
Aviation Innovation, Reform and Reauthorization Act of 2016.**

Dear Madams/Sirs:

After reading the Aviation Innovation, Reform and Reauthorization Act of 2016 (AIRR), I was left with one question: where is the provision that establishes enforceable aviation noise standards? The Transportation & Infrastructure Committee is to be commended for including provisions that will increase community involvement (Sec. 614), require the FAA to review the relationship between aircraft noise exposure and its effects on communities around airports (Sec. 604), revisit certain FAA actions for which a categorical exclusion was taken (Sec. 137), and require the FAA to revisit its methodology for assessing aviation noise (Sec. 138). However, without enforceable aviation noise standards, these provisions mean very little.

Currently, there are no enforceable aviation noise standards. “65 DNL” is not a standard, but rather a threshold, above which the FAA has determined that aviation noise will have a “significant” impact on the human environment. When assessing the environmental impact of a proposed project under the National Environmental Policy Act (NEPA), the FAA uses this threshold. However, even if the noise from a project has a significant impact, and a mitigation program is developed and approved by the FAA, that mitigation program is not enforceable.

Another way that the 65 DNL threshold is used is in the development of “Noise Compatibility Programs” (NCP) and “Noise Exposure Maps” under Part 150 of Title 14 of the Code of Federal Regulations. The Part 150 program, however, is voluntary. In order to entice airports to participate in the program, the statute offers the airports immunity from common law causes of action for aviation noise. *See* 49 U.S.C. § 47506. But both the FAA and the airports claim that once developed, the NCP is not enforceable. That is, the FAA will not force an airport to comply with the terms of a FAA-approved NCP. This leaves the airport proprietor free to change the NCP on a whim, selectively carry out the NCP’s

provisions, and exclude against certain individuals or populations from receiving the benefits of the NCP without any repercussions.

Thus, the 65 DNL threshold is not enforceable either by the FAA or by citizens affected by the noise. This leaves those citizens without standing or protect themselves and their property from the harm they suffer as a result of aviation noise.

Right now the lack of enforceable aviation noise standards is causing harm to many citizens in Phoenix, Arizona, Santa Cruz, California, San Diego, California, Boston, Massachusetts, Chicago, Illinois, Minneapolis, Minnesota, Charlotte, North Carolina, and Seattle, Washington. Citizens in these cities, and the surrounding communities, are not close to the airport and outside the 65 DNL contour, but are experiencing a harmful increase in aviation noise due to shifts in flight paths. They are experiencing aviation noise when they had experienced none, or very little, before. Because the noise they experience is not deemed “significant” by the FAA, the FAA believes it has no duty to mitigate. But damages from aviation noise, even if they are not “significant” by FAA’s standards, are damages nonetheless. And because of the lack of enforceable aviation noise standards, it is much more difficult for the FAA carry out its statutory duty to protect the citizens on the ground from aviation noise. Moreover, the citizens affected by aviation noise have little recourse against the airlines, the airports, or the FAA for failing to protect them and their families from aviation noise.

Three changes can be made to the aviation laws to rectify this situation, even within the context of the current DNL methodology.

- The FAA should establish a standard for all commercial aircraft, wherever they might be flying, using the FAA’s authority under 49 U.S.C. § 40103(b)(2) and 49 U.S.C. § 44715. If an aircraft exceeds this standard, the owner of the aircraft would be subject to a fine. The penalty should increase with multiple violations. This standard would be classified as a “noise control requirement” under 42 U.S.C. § 4911(f).
- Chapter 475 of Title 49 of the United States Code, § 47503 should be amended to read: “an airport operator shall submit to the Secretary of Transportation a noise exposure map . . .” and § 47504 to state that an airport operator “shall submit a noise compatibility program to the Secretary of Transportation . . .” The intent is to include Part 150 noise compatibility planning as part of the airport certificate process.

- Chapter 475 of Title 49 of the United States Code, which deals with aircraft noise and sets up the statutory authority for the FAA to issue regulations that became Part 150, should be amended. In particular, § 47504 should be amended to add a subsection (b)(5) that states “A program approved by the Secretary under this section shall be deemed a ‘noise control requirement’ under 42 U.S.C. 4911(f).” This would subject the Part 150 Noise Compatibility Program to the citizen’s suit provision of the Noise Control Act.

While the provisions that have been included in AIRR are very helpful and important steps in establishing an aviation noise regulatory system that seeks to protect families and their communities from the public health hazards and risks of harmful aviation noise, they simply do not go far enough to address the problems that currently exist.

Community involvement in government is at the core of our democracy and therefore those affected by harmful aviation noise should unequivocally be included in any discussion when the federal government imposes regulations or policies on citizens. However, it is equally part of democracy that the citizens have the right to redress when the government chooses to enact regulations or policies that harm the citizens. Without enforceable aviation noise standards, citizens have extremely limited options for such redress. That needs to change.

Thank you for your time and consideration of this important issue. A more complete analysis of the situation can be found at <https://airportlaw.wordpress.com/2016/02/20/enforceable-aviation-noise-standards-are-needed/>

Yours very truly,

TABER LAW GROUP, P.C.



Steven M. Taber