[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150

Docket No. FAA-2004-19158; Amendment No. 150-4

RIN 2120-AI37

Airport Noise Compatibility Planning

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this final rule, with request for comments, to amend the regulations implementing airport noise compatibility planning to include amendments made to the authorizing legislation, which is formerly known as the Aviation Safety and Noise Abatement Act of 1979 (ASNA). This final rule incorporates new requirements imposed by laws that amended ASNA. These technical changes are necessary to conform the regulations to amendments set forth in the Vision 100—Century of Aviation Reauthorization Act of 2003 (Vision 100). This final rule also updates the statutory citations in the regulations to reflect the repeal and replacement of ASNA as part of a broad recodification of federal transportation laws in July 1994, and revises the regulations to include the 1987 amendment to ASNA that requires airport sponsors to provide notice and an opportunity for a public hearing before submitting a noise compatibility program to the FAA. To facilitate the availability of documents for inspection by the public, this final rule also updates the addresses of FAA regional offices that have moved since 1989. The final rule also enlarges the minimum scale for noise

exposure maps to facilitate FAA's ability to make noise and land use information from noise exposure maps available on the Internet via its Website, pursuant to Vision 100.

DATES: This final rule is effective [Insert date 30 days from date of publication in the FEDERAL REGISTER]. Comments must be submitted on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may send comments, identified by Docket Number FAA-2004-19158, using any of the following methods:

- DOT Docket Web site: Go to http://dms.dot.gov and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to http://www.regulations.gov and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; US Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.
- Fax: (202) 493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Privacy: We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. For more

information, see the Privacy Act discussion in the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Victoria L. Catlett, APP-600, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3263; facsimile (202) 267-8821; e-mail vicki.catlett@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule to conform 14 CFR part 150 to 49 U.S.C. 47501et seq., without prior notice and opportunity for public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Therefore, we invite interested persons to participate in this rulemaking by sending written data, views, or arguments directly related to these amendments. We also invite comments about environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each

substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or you may visit http://dms.dot.gov.

The FAA will consider all comments received on or before the closing date for comments. We will also consider late-filed comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments and the following statement: "Comments to Docket No. FAA-2004-19158." We will date-stamp the postcard and mail it to the commenter.

Availability of Final Rule

You can get an electronic copy of the final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's Web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. To facilitate a prompt response, please make sure that the request identifies the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBRFA on the Internet at our site, http://www.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us at 9-AWA-SBREFA@faa.gov.

Background

On December 30, 1987, the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223 (AASCE) was enacted. Section 301 of AASCE amended Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (ASNA) to require airport sponsors to provide notice and an opportunity for a public hearing before submitting noise compatibility programs to the FAA. Section 104 of ASNA is now recodified at 49 U.S.C. 47504(a)(1)(B). Part 150 has not been updated to incorporate this requirement, although we have prepared recommendations to expedite and streamline part 150 as part of a study and Report to Congress pursuant to Section 301(d) of AASCE. Of the nine recommendations in that Report to Congress, Vision 100-

Century of Aviation Reauthorization Act, Pub. L. No. 108-176 (Vision 100) addressed the recommendation to allow sponsors to select a flexible forecast year timeframe. We have administratively implemented in full or in part all but two of the remaining recommendations.

On December 12, 2003, the President signed Vision 100. Section 324 of Vision 100 amended 49 U.S.C. 47503 to clarify the forecast time period for noise exposure maps (NEMs) and to require revised NEMs in certain new circumstances, as follows:

"Section 47503 is amended- (1) in subsection (a) by striking '1985,' and inserting 'a forecast period that is at least 5 years in the future'; and (2) by striking subsection (b) and inserting the following: '(b) REVISED MAPS.-If, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use or noise reduction.'."

The FAA is issuing these amendments to part 150 as a final rule because they incorporate changes to the underlying enabling legislation, 49 U.S.C. 47501 et seq. This final rule also includes several minor, technical revisions. First, it changes the minimum scale of NEMs to facilitate our implementation of Section 322 of Vision 100. Section 322 of Vision 100 requires us to make noise exposure and land use information from NEMs available to the public on the Internet via our Website. Specifically, it states:

"(b) PUBLIC AVAILABILITY OF NOISE EXPOSURE MAPS.- The Administrator shall make noise exposure and land use information from noise exposure maps available to the public via the Internet on its website in an appropriate format. (c) NOISE EXPOSURE MAP.- In this section, the term 'noise exposure map' means a noise exposure map prepared under section 47503 of title 49, United States Code."

The FAA has determined that, given the amount of information contained in NEMs, it is necessary to enlarge the minimum scale to allow us to provide useful information on the Internet.

Second, this final rule updates the statutory citations in part 150 to reflect the repeal and replacement of ASNA as part of a broad recodification of Federal transportation laws in title 49 U.S.C. ("Revision of Title 49, United States Code Annotated, "Transportation"", Pub. L. No. 103-272, July 25, 1994). Finally, the locations where documents are available for inspection have been revised because several FAA regional offices have moved since 1989.

Section-by-section Analysis

Part 150—Airport Noise Compatibility Planning

On December 30, 1987, the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. No. 100-223 (AASCE) was enacted to, among other things, amend Section 104 of the Aviation Safety and Noise Abatement Act of 1979 (ASNA) to include a requirement for airport sponsors to provide notice and an opportunity for a public hearing before submitting noise compatibility programs to the FAA for action. This rule amends § 150.23 to include this requirement.

In 1994, the major Federal transportation laws enacted before July 1, 1993 were repealed, restated without substantive changes, and recodified in title 49 of the United States Code (Pub. L. No. 103-272). As a result of the recodification, the statutory citations in part 150 are obsolete. This rule updates §§ 150.3, 150.5, 150.7, and 150.21 to reflect ASNA recodification.

On December 12, 2003, the President signed Public Law 108-176, Vision 100-Century of Aviation Reauthorization Act (Vision 100), including certain amendments to 49 U.S.C. 47501 et seq. This final rule amends part 150 to mirror new requirements for airport noise compatibility planning found in Vision 100 as follows:

§150.7 Definitions

This section clarifies the definition for "Noise Exposure Map" (NEM) in accordance with 49 U.S.C. 47503, as amended by Section 324 of Vision 100. Vision 100 clarifies that airport sponsors may select a forecast period longer than five years. Previously, ASNA literally mandated a 1985 forecast NEM by requiring "a description of estimated aircraft operations during 1985." Since ASNA's enactment in 1980, the FAA has interpreted "1985" to refer to a five year forecast period (see, for example, former 14 CFR 150.7, "*Noise Exposure Maps*"). Airport sponsors were permitted to prepare additional maps for forecast periods greater than five years.

§150.13 Incorporations by reference.

Since 1989, some FAA regional offices have moved. The FAA makes part 150 documents available for inspection at regional offices. This rule revises § 150.13 to update the office addresses.

§150.21 Noise exposure maps and related descriptions.

This section incorporates the new requirement to revise NEMs under 49 U.S.C. 47503, as amended by Section 324 of Vision 100. Under Section 324, if there is a change in the operation of the airport which causes a significant reduction in noise over existing noncompatible uses that is not reflected in either the existing conditions map or forecast map currently on file with the FAA, an airport sponsor is required to update its NEM.

Appendix A, Noise Exposure Maps.

The minimum map scale in Appendix A is enlarged to 1" = 2,000' to facilitate the FAA's ability to implement Section 322(b) of Vision 100. Section 322(b) requires us to post noise exposure and land use information from NEMs on our Website via the Internet. The NEMs submitted to us include such a large amount of information that it would be difficult for us to make information available from those maps using the current minimum map scale in Appendix A (1" = 8,000').

The FAA makes part 150 documents, including NEMs available for inspection at regional offices. As discussed above, since some FAA regional offices have moved since 1989, this rule revises § 150.13 to update the office addresses.

Waiver Under the Administrative Procedure Act

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. This final rule incorporates changes to address (1) the 1987 amendments to ASNA under Section 301 of AASCE requiring notice and an opportunity for a public hearing in preparing noise compatibility programs, (2) the 1994 Congressional repeal and recodification of ASNA, and (3) the 2003 amendments to 49 U.S.C. 47503 and 47504 pursuant to Section 324 of Vision 100 and the Internet posting requirements for the FAA under Section 322 of Vision 100. Because the amendments essentially address legislative changes, we have determined that good cause exists to waive prior notice and comment.

Paperwork Reduction Act

Information collection requirements currently contained in part 150 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120-0517. This final rule codifies the requirement under Section 324 of Vision 100 for airport sponsors to revise their NEMs if a change in the operations at the airport would significantly reduce noise over existing noncompatible land uses and certain other circumstances exist. Section 322 of Vision 100 requires the FAA to make noise exposure and land use information from NEMs available to the public via our Website on the Internet. This final rule imposes no paperwork burden on any individual or entity and, therefore, no evaluation of paperwork burden is required.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We have determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to

analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing the U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation). The value equivalent of $100 million in calendar year (CY) 1995, adjusted for inflation to the CY2003 level by the Consumer Price Index for all Urban Consumers (CPI-U), and published by the Bureau of Labor Statistics is $120.7 million.

However, for proposed or final rules with an expected minimal impact the above-specified benefit/cost evaluation is not required. The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of proposed or final rules. If it is determined that the expected economic impact is so minimal that a proposed or final rule does not warrant a full Evaluation, a statement to that effect and the basis for it is included in the proposed or final rule.

This final rule imposes minor additional costs on airports that submit airport noise compatibility plans due to the new requirement for enlarged minimal map scales on submitted noise expose maps. Otherwise, this final rule updates 14 CFR part 150 to incorporate new requirements imposed over the past years by laws that amended ASNA.

Part 150 implements, and should therefore conform to, 49 U.S.C. 47501 et seq. This final rule eliminates the potential for discrepancies between 49 U.S.C. 47501 et seq., and part 150 that could confuse airport sponsors, consultants, and the public about airport noise compatibility planning requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule imposes minor additional costs on airports that submit airport noise compatibility plans due to the new requirement for enlarged minimal map scales on submitted noise expose maps. Otherwise, this final rule merely incorporates new requirements imposed by laws that amended ASNA. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule will not result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. No. 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The value equivalent of $100 million in calendar year (CY) 1995, adjusted for inflation to the CY2003 level by the Consumer Price Index for all Urban Consumers (CPI-U), and published by the Bureau of Labor Statistics is $120.7 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

In accordance with Paragraph 312, Categorical Exclusions For Regulatory Actions, subparagraph d of FAA Order 1050.1E, the FAA has determined that this action is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act (NEPA). Subparagraph d categorically excludes "Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking, and issuance of Final Rules) covering administrative or procedural requirements." This final rule amends part 150 to incorporate new requirements imposed by laws that amended 49 U.S.C. 47501 et seq. This final rule also updates the statutory citations in the regulation to reflect the repeal and replacement of ASNA as part of a broad recodification of federal transportation laws in title 49 of the United States Code in July 1994, and also updates the addresses of FAA regional offices that have moved since 1989. In addition, we have determined that there are no "extraordinary circumstances" associated with the proposed action that would otherwise require the preparation of an environmental assessment or an environmental impact statement.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 150

Airports, Noise control.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

PART 150—AIRPORT NOISE COMPATIBILITY PLANNING

1. The authority citation for part 150 ~~reads~~ continues to read as follows:

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

2. Revise § 150.3 to read as follows:

§150.3 Applicability.

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.

* * * * *

3. Revise paragraphs (a) and (c) of § 150.5 to read as follows:

§150.5 Limitations of this part.

(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) * * *

(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.

* * * * *

4. Amend § 150.7 by ~~correcting the legal citation in~~ revising the definitions for "ASNA Act," and ~~revising the definition for~~ "Noise exposure map," to read as follows:

§150.7 Definitions.

* * *

"*ASNA Act*" means 49 U.S.C. 47501 et seq.

* * *

"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).

* * * * *

5. Amend § 150.13 by revising paragraphs (e)(1), (e)(3), (e)(3)(ii), (e)(3)(iii), (e)(3)(v), (e)(3)(vi), (e)(3)(vii), and (e)(3)(ix), and by deleting paragraph (e)(3)(xi), to read as follows:

§ 150.13 Incorporations by reference.

* * * * *

(e) * * *

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

(2) * * *

(3) 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) * * *

(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)* * *

(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) * * *

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

* * * * *

6. Revise paragraphs (a)(1), (d), (f)(1) introductory text and (f)(2) introductory text of § 150.21 to read as follows:

§ 150.21 Noise exposure maps and related descriptions.

(a) * * *

(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) * * *

(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) * * *

(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--

(i) * * *

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

* * * * *

7. Revise paragraph (d) of § 150.23 to read as follows:

§ 150.23 Noise compatibility programs.

(a) * * *

(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.

* * * * *

8. Revise paragraph (f) of § 150.35 to read as follows:

§ 150.35 Determinations; publications; effectivity.

(a) * * *

(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.

* * * * *

9. Amend Appendix A to part 150 by revising paragraph (b)(1) of section A150.103 to read as follows:

APPENDIX A TO PART 150—NOISE EXPOSURE MAPS

* * * * *

PART B—NOISE EXPOSURE MAP DEVELOPMENT

* * * * *

Sec. A150.103 Use of computer prediction model.

(a) * * *

(b) * * *

(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.

* * * * *

SEP 1 7 2004

Issued in Washington, DC, on ~~[*insert date signed*]~~.

Marion C. Blakey
Administrator