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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 150 [Docket No. 28149]

Final Policy on Part 150 Approval of Noise Mitigation Measures: Effect on the Use of Federal Grants for Noise Mitigation Projects

ACTION: Notice of Final Policy.

SUMMARY: This final policy establishes a distinction between remedial and preventive noise mitigation measures proposed by airport operators and submitted for approval by the Federal Aviation Administration (FAA) under applicable noise compatibility planning regulations. Implementation of this policy also results in certain new limitations on the use of Airport Improvement Program (AIP) funds for remedial noise mitigation projects. The proposed policy was published in the Federal Register on March 20, 1995 (60 FR 14701), and public comments were received and considered. On May 28, 1997, the revised policy as proposed for issuance was published in the Federal Register. However, prior to the issuance of the policy the FAA requested supplemental comment on the impact of its limitations on PFC eligibility. The FAA considered the comments on PFC eligibility thus received and has revised the final policy. All other issues were considered to have been adequately covered during the original comment period.

Accordingly, as of October 1, 1998, the FAA will approve under 14 CFR part 150 (part 150) only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. The FAA will not approve remedial noise mitigation measures for new noncompatible development that occurs in the vicinity of airports after the effective date of this final policy.

As of the same effective date, the use of AIP funds will be affected to the extent that such use depends on approval under part 150. Since this policy only affects part 150 approvals, it does not apply to projects that can be financed with AIP funds without a part 150 program. The bulk of noise projects receive AIP funding pursuant to their approval under part 150.

After review and consideration of comments received, FAA has determined that this policy need not affect financing noise projects with passenger facility charge (PFC) revenue because part 150 approval is not required for such projects.

DATES: Effective October 1, 1998.

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SUPPLEMENTARY INFORMATION:

Background

The Airport Noise Compatibility Planning Program (14 CFR part 150, hereinafter referred to as part 150 or the part 150 program) was established under the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 47501 through 47509, hereinafter referred to as ASNA). The part 150 program allows airport operators to submit noise exposure maps and noise compatibility programs to the FAA voluntarily. According to the ASNA, a noise compatibility program sets forth the measures that an airport operator has taken or has proposed for the reduction of existing noncompatible land uses and the prevention of additional noncompatible land uses within the area covered by noise exposure maps.

The ASNA embodies strong concepts of local initiative and flexibility. The submission of noise exposure maps and noise compatibility programs is left to the discretion of local airport operators. Airport operators also may choose to submit noise exposure maps without preparing and submitting a noise compatibility program. The types of measures that

airport operators may include in a noise compatibility program are not limited by the ASNA, allowing airport operators substantial latitude to submit a broad array of measures--including innovative measures--that respond to local needs and circumstances.

The criteria for approval or disapproval of measures submitted in a part 150 program are set forth in the ASNA. The ASNA directs the Federal approval of a noise compatibility program, except for measures relating to flight procedures: (1) if the program measures do not create an undue burden on interstate or foreign commerce; (2) if the program measures are reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and (3) if the program provides for its revision if necessitated by the submission of a revised noise exposure map. Failure to approve or disapprove a noise compatibility program within 180 days, except for measures relating to flight procedures, is deemed to be an approval under the ASNA. Finally, the ASNA sets forth criteria under which grants may be made to carry out noise compatibility projects, consistent with the ASNA's overall deference to local initiative and flexibility.

The FAA is authorized, but not obligated, to fund projects via the Airport Improvement Program (AIP) to carry out measures in a noise compatibility program that are not disapproved by the FAA. Such projects also may be funded with local PFC revenue upon the FAA's approval of an application filed by a public agency that owns or operates a commercial service airport, although the use of PFC revenue for such projects does not require an approved noise compatibility program under part 150.

In establishing the airport noise compatibility planning program, which became embodied in FAR part 150, the ASNA did not change the legal authority of state and local governments to control the uses of land within their jurisdictions. Public controls on the use of land are commonly exercised by zoning. Zoning is a power reserved to the states under the U. S. Constitution. It is an exercise of the police powers of the states that designates the uses permitted on each parcel of land. This power is usually delegated in state enabling legislation to local levels of government.

Many local land use control authorities (cities, counties, etc.) have not adopted zoning ordinances or other controls to prevent noncompatible development (primarily residential) within the noise impact areas of airports. An airport's noise impact area, identified within noise contours on a noise exposure map, may extend over a number of different local jurisdictions that individually control land uses. For example, at five airports recently studied, noise contours overlaid portions of 2 to 25 different jurisdictions.

While airport operators have included measures in noise compatibility programs submitted under part 150 to prevent the development of new noncompatible land uses through zoning and other controls under the authorities of appropriate local jurisdictions, success in implementing these measures has been mixed. A study performed under contract to the FAA, completed in January 1994, evaluated 16 airports having approved part 150 programs for the implementation of land use control measures. This study found that of the 16 airports, 6 locations had implemented the recommended zoning measures, 7 locations had not implemented the recommended zoning measures, and 3 were in the process of implementation.

Another independent study evaluated 10 airports that have FAA approved part 150 programs in place and found that 4 locations had prevented new noncompatible development and 6 locations had not prevented such new development. At the latter 6 locations, the study reported that 26 nonairport sponsor jurisdictions had approved new noncompatible development and 28 nonairport sponsor jurisdictions and 1 airport sponsor jurisdiction had vacant land that is zoned to allow future noncompatible development.

The independent study identified the primary problem of allowing new noncompatible land uses near airports to be in jurisdictions that are different from the airport sponsor's jurisdiction. This is consistent with observations by the FAA and with a previous General Accounting Office report which observed that the ability of airport operators to solve their noise problems is limited by their lack of control over the land surrounding the airports and the operator's dependence on local communities and states to cooperate in implementing land use control measures, such as zoning for compatible uses.

The FAA's January 1994 study explored factors that contribute to the failure to implement land use controls for noise purposes. A major factor is the multiplicity of jurisdictions with land use control authority within airport noise impact areas. The greater the number of different jurisdictions, the greater the probability that at least some of them will not implement controls. In some locations, local land use control jurisdictions and airport operators have not developed cooperative relationships, the lack of which impedes appropriate land use compatibility planning. Further, some local jurisdictions are not fully aware of the effects of aircraft noise and of the desirability of land use controls. This appears to be worsened by the normal turnover of leadership in local government. These conditions could be improved through greater efforts by all involved parties to communicate and inform each other about the nature of aviation noise and of the effective preventive and remedial actions available to local jurisdictions to assure long term compatible land use.

Some jurisdictions do not perceive land use controls as a priority because the amount of vacant

land available for noncompatible development within the airport noise impact area is small, perhaps constituting only minor development on dispersed vacant lots, or because the current demand for residential construction near the airport is low to nonexistent. In such areas, land use control changes are not considered to have the ability to change substantially the number of residents affected by noise. Jurisdictions may also give noise a low priority compared to the economic advantages of developing more residential land or the need for additional housing stock within a community. A zoning change from residential to industrial or commercial may not make economic sense if little demand exists for this type of development. Therefore, a zoning change is viewed as limiting development opportunities and diminishing the opportunities for tax revenues.

In some cases, zoning for compatible land use has met with organized public opposition by property owners arguing that the proposed zoning is a threat to private property rights, and that they deserve monetary compensation for any potential property devaluation. Further, basic zoning doctrine demands that the individual land parcels be left with viable economic value, i.e., be zoned for a use for which there is reasonable demand and economic return. Otherwise, the courts may determine a zoning change for compatibility to be a "taking" of private property for public use under the Fifth Amendment to the U. S. Constitution, requiring just compensation.

One or more of the factors hindering effective land use controls may be of sufficient importance to preclude some jurisdictions from following through on the land use recommendations of an airport's part 150 noise compatibility program. When either an airport sponsor's or a nonairport sponsor's jurisdiction allows additional noncompatible development within the airport's noise impact area, it can result in noise problems for the people who move into the area. This can, in turn, result in noise problems for the airport operator in the form of inverse condemnation or noise nuisance lawsuits, public opposition to proposals by the airport operator to expand the airport's capacity, and local political pressure for airport operational and capacity limitations to reduce noise. Some airport operators have taken the position that they will not provide any financial assistance to mitigate aviation noise for new noncompatible development. Other airport operators have determined that it is a practical necessity for them to include at least some new residential areas within their noise assistance programs to mitigate noise impacts that they were unable to prevent in the first place. Over a relatively short period of time, the distinctions blur between what is "new" and what is "existing" residential development with respect to airport noise issues.

Airport operators currently may include new noncompatible land uses, as well as existing noncompatible land uses, within their part 150 noise compatibility programs and recommend that remedial noise mitigation measures--usually either property acquisition or noise insulation--be applied to both situations. These measures have been considered to qualify for approval by the FAA under 49 USC 47504 and 14 CFR part 150. The part 150 approval enables noise mitigation measures to be considered for Federal funding under the AIP, although it does not guarantee that Federal funds will be provided.

The Change in FAA Policy

Beginning October 1, 1998, the FAA will approve under part 150 only remedial noise mitigation measures for existing noncompatible development and only preventive noise mitigation measures in areas of potential new noncompatible development. As of the same date, the ability to use AIP grants to carry out such measures will be affected to the extent that such remedial measures may not be approved under part 150. This policy is not retroactive and does not affect part 150 approvals made before the effective date of the policy or AIP funding consistent with previous approvals. PFC funding will only be affected to the extent that an airport operator chooses to rely on an approved part 150 program for FAA's approval to use PFC funds.

Discussion

The continuing development of noncompatible land uses around airports is not a new problem. The FAA, airport operators, and the aviation community as a whole have for some years expended a great deal of effort to deal with the noise problems that are precipitated by such development.

With respect to the part 150 program and Airport Improvement Program (AIP) noise grants, the FAA considered in the 1989-1990 timeframe whether to disallow Federal assistance for new noncompatible land uses. The choice posed at that time was either (1) allow Federal funding for airport operator recommendations in part 150 programs that included new noncompatible land uses within the parameters of noise mitigation measures targeted for financial assistance from the airport (e.g., acquisition, noise insulation), or (2) disallow all Federal funding for new noncompatible development that local jurisdictions fail to control through zoning or other land use controls. No other alternatives were considered.

The FAA selected the first option--to continue to allow Federal funds to be used to mitigate new noncompatible development as well as existing noncompatible development if the airport operator so chose. Several factors supported this decision. One factor was lack of authority by airport operators to prevent new noncompatible development in nonairport

sponsor jurisdictions, although airport sponsors bear the brunt of noise lawsuits. Intense local opposition to an airport can adversely affect its ability to accommodate operations within its existing capacity, or to expand its facilities when needed. The FAA also considered the plight of local citizens living with a noise impact that they may not have fully understood at the time of home purchase. Land use noise mitigation measures, funded by the airport either with or without Federal assistance, may be the only practical tool an airport operator has to mitigate noise impacts in a community. The FAA was hesitant to deny airport operators and the affected public Federal help in this regard. In addition, the FAA gave deference to the local initiative, the flexibility, and the ability to fund a broad range of measures approved under the ASNA.

Since this review in 1989-1990, the FAA has given extensive additional consideration to the subject of noncompatible land uses around airports. The change in FAA policy presented here involves a more measured and multifaceted approach than the proposal considered in 1989-1990.

A primary criterion in the ASNA for the FAA's approval of measures in an airport's part 150 noise compatibility program is that the measures must be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Until now, the FAA has applied this criterion as a whole when issuing determinations under part 150; that is, if a measure either reduces or prevents noncompatible development, no matter when that development occurs, it may be approved as being reasonably consistent. No distinction has been made by the FAA between remedial noise mitigation measures that address preexisting noncompatible development and measures that prevent new noncompatible development. Airport operators may, therefore, recommend and receive FAA approval under part 150 for remedial acquisition or soundproofing of new residential development.

The FAA now believes that it would be more prudent to distinguish between (1) noise mitigation measures that are reasonably consistent with the goal of reducing existing noncompatible land uses (i.e., remedial measures) and (2) noise mitigation measures that are reasonably consistent with the goal of preventing the introduction of additional noncompatible land uses (i.e., preventive measures). Using such a distinction, airport operators would need to identify clearly within the area covered by noise exposure maps the location of existing noncompatible land uses as well as the location of potentially new noncompatible land uses. Many airport operators currently record this distinction in their noise exposure map submissions, when identifying noncompatible land uses. Potentially new noncompatible land uses could include (1) areas currently undergoing residential or other noncompatible construction; (2) areas zoned for residential or other noncompatible development where construction has not begun; and (3) areas currently compatible but in danger of being developed noncompatibly within the timeframe covered by the airport's noise compatibility program.

The purpose of distinguishing between existing and potential new noncompatible development is for airport operators to restrict their consideration of remedial noise mitigation measures to existing noncompatible development and to focus preventive noise mitigation measures on potentially new noncompatible development. The most commonly used remedial noise mitigation measures are land acquisition and relocation, noise insulation, easement acquisition, purchase assurance, and transaction assistance. The most commonly used preventive noise mitigation measures are comprehensive planning, zoning, subdivision regulations, acquisition of easements or development rights to restrict noncompatible development, revised building codes for noise insulation, and real estate disclosure. Acquisition of vacant land may also be a preventive noise mitigation measure with supporting evidence in the airport operator's part 150 submission that acquisition is necessary to prevent new noncompatible development because noncompatible development on the vacant land is highly likely and local land use controls will not prevent such development. Often, combinations of these measures are applied to ensure the maximum compatibility.

Under this final FAA policy, airport operators can continue to apply the most commonly used noise mitigation measures in their noise compatibility programs. Local flexibility to recommend other measures, including innovative measures, under part 150 would be retained. However, all noise mitigation measures applied to existing noncompatible development must clearly be remedial and serve the goal of reducing existing noncompatible land uses. Similarly, all noise mitigation measures applied to potential new noncompatible development must clearly be preventive and serve the goal of preventing the introduction of additional noncompatible land uses.

Any future FAA determinations issued under part 150 will be consistent with this policy. The FAA's approval of remedial noise mitigation measures will be limited to existing noncompatible development. The FAA's approval of preventive noise mitigation measures will be applied to potential new noncompatible development.

The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. For example, minor development on vacant lots within an existing residential neighborhood, which clearly is not extensive new noncompatible development, may for practical purposes need to be treated with the same

remedial measure applied to the rest of the neighborhood. Another example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators must provide adequate justification in their part 150 submittals for such exceptions to the policy guidelines.

It should be noted that AIP (as well as PFC) funds can continue to be used for projects approved as mitigation measures in an FAA environmental document for airport development. This final policy does not affect funding for such projects.

The use of Federal AIP funds for noise projects will be affected to the extent that funding for such projects relies on a part 150 approval; that is, remedial projects for existing noncompatible development and preventive projects for potential new noncompatible development when part 150 approval is a prerequisite for the use of AIP funds. This is the consequence of the policy decision not to approve remedial mitigation measures for new noncompatible development in a part 150 program.

This policy will not affect AIP funding for those few types of noise projects, such as soundproofing of schools and health care facilities, that are eligible for AIP funds without an approved part 150 program. Additionally, after review and consideration of comments noting that part 150 approval is not a requirement for using PFC funds, FAA has determined that this policy does not affect the use of PFC funds for noise projects. It would only affect PFC funding to the extent that an airport operator chooses to rely solely on an approved part 150 program to obtain approval to use PFC funds. That is the airport operator's choice.

The impact of revising the FAA's policy on part 150 noise determinations will be to preclude the use of the part 150 program and AIP funds dependent on part 150 program approval to remedy new noncompatible development within the noise contours of an airport after the effective date of this final policy. By precluding this option while at the same time emphasizing the array of preventive noise mitigation measures that may be applied to potential new noncompatible development, the FAA seeks to focus airport operators and local governments more clearly on using these Federal programs to the maximum extent to prevent noncompatible development around airports, rather than attempting to mitigate noise in such development after the fact. The FAA has determined that such a policy will better serve the public interest. Unlike the FAA's previous consideration of this issue in 1989-1990, AIP funding may be available to assist airport operators in dealing with prospective new noncompatible development that is not being successfully controlled by local jurisdictions, so long as the airport's methods are designed to prevent the noncompatible development rather than to mitigate it after development has occurred. This should be a more cost-effective use of available funds since remedial noise mitigation measures generally cost more for a given unit than preventive measures.

In selecting a date to implement this final policy, the FAA has weighed the benefits of implementing it as rapidly as possible against those of a longer transition period in consideration of ongoing part 150 programs. One approach considered was to implement it on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150.

This approach would have the advantage of directly tying this policy to a point in time for which an airport operator has defined, in a public process, the size of the airport's noise impact area and has consulted with local jurisdictions on measures to reduce and prevent noncompatible land uses. There are, however, disadvantages to this approach. More than 200 airports have participated in the part 150 program, beginning in the early 1980's. Thus, selecting either the noise exposure map's acceptance date or the noise compatibility program's approval date for these airports, which includes the great majority of commercial service airports with noise problems, would entail either applying this final policy retroactively or applying it prospectively at some future date as such airports update their maps and programs.

The selection of an airport-by-airport retroactive date would have required the FAA and airport operators to review previous part 150 maps and programs, historically reconstructing which land use development was "existing" at that time and which development is "new" since then, potentially to withdraw previous FAA part 150 determinations approving remedial measures for "new" development, and not issue new AIP grants for any "new" development (which by this date may have already been built and in place for a number of years and be regarded locally as an integral part of the airport's mitigation program for existing development). There was the further practical consideration of benefits to be achieved. It may now be too late to apply preventive noise mitigation measures to noncompatible land uses that have been developed since an airport's noise exposure maps have been accepted or noise compatibility program has been approved. If remedial noise mitigation measures were now determined not to be applicable to such areas, the areas would be left in limbo, having had no advance warning of a change in Federal policy.

There would also be disadvantages to applying this final policy prospectively on an airport-

by-airport basis as an airport either updates a previous part 150 program or completes a first-time part 150 submission. The major disadvantages would be in the timeliness of implementing this final policy and the universality of its coverage. Since part 150 is a voluntary program, airport operators may select their timing of entry into the program and the timing of updates to previous noise exposure maps and noise compatibility programs. The result would be a patchwork implementation, with some airports operating under the new policy regarding part 150 noise mitigation measures and funding and other airports operating under the old policy for an unspecified number of years.

The FAA has determined that its preferred option is to select one prospective date nationwide as the effective date for this final policy rather than to implement it based on an individual airport's part 150 activities, either maps or program. A specific date will ensure nationwide application on a uniform basis and provide a more timely implementation than prospective airport-by-airport implementation dates. The FAA considered two options with respect to the selection of a specific date: (1) the date of issuance of a final policy following the evaluation of comments received on its proposal or (2) a future date, 180 days to a year after publication of a final policy to allow transition time for airport operators to accommodate part 150 programs currently in preparation and those programs completed and submitted to FAA, but still under its review.

The FAA anticipated in its notice of this change in policy that there would be a transition period from the date of issuance of a final policy of at least 180 days to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and are undergoing statutory review. The FAA also announced in its notice that provision for this period plus an additional margin of time beyond 180 days would allow airport operators additional opportunity to amend programs currently in preparation, in consultation with local jurisdictions, to emphasize preventive rather than remedial measures for new development. Accordingly, the FAA sought comment on how long the transition period should be.

In view of the extended time period since publication of the original notice, plus the opportunity for supplemental comment on the impacts of the policy on PFC eligibility, and the changes made in the policy to accommodate the concerns raised, the effective date of October 1, 1998, which provides a 180-day transition period, is regarded as more than adequate.

Since part 150 is a voluntary program, each airport operator has the discretion to make its own determinations regarding the impact of this final policy on existing noise compatibility programs. The FAA will not initiate withdrawals of any previous part 150 program approvals based on this policy. New part 150 approvals after the effective date of this final policy will conform to this policy. Any remedial noise mitigation measures for noncompatible development that occurs within the area of an airport's noise exposure maps after the effective date of this final policy may have to be funded locally, since the measures will not be approvable under part 150.

Discussion of Comments to the May 28, 1997, Notice

Please note that FAA responded in full in the Federal Register on May 28, 1997 (62 FR 28816) to the comments received to the Notice of Proposed Policy, as published in the Federal Register on March 20, 1995 (60 FR 14701).

On May 28, 1997, the FAA issued a notice of a revised proposed policy (62 FR 28816), and solicited additional comments from the public on the proposed policy's impacts on Passenger Facility Charges. Four organizations and one Federal agency submitted comments on the proposal. The organizations included two airport operators, an airport association, and an organization representing noise impacted communities. The issues raised in the comments are summarized and addressed below:

Issue: Linkage of PFC funding to AIP funding. The airport association, one airport operator, and the Federal agency objected to linking limitations on PFC funding to limitations on AIP funding, generally indicating that the two funding procedures are fundamentally different. They further indicated that PFC funding is basically locally generated and expended under local priorities within general FAA guidelines, whereas AIP funding is nationally generated and disbursed under national funding priorities, and therefore lacks the flexibility required to address local problems in a timely manner. They also indicated that such a limitation on PFC funding would seriously impair airport operators' ability to respond to specific local problems.

FAA Response: FAA has addressed this issue by establishing a distinction between remedial and preventive noise mitigation measures under part 150, and by announcing that on and after the effective date of this policy the FAA will not approve remedial measures for new noncompatible land uses. This indirectly affects the use of AIP funds for measures which, henceforth, will not be approved by the FAA an airport operator's part 150 program, but does not affect funding from any source that does not rely on the FAA's approval of a part 150 program.

Issue: Retroactive nature of the funding limitations. The organization representing noise impacted communities objected to the 'retroactive" nature of the proposed limitations on PFC funding (as well as the proposed limitations on AIP funding), indicating that in many airport noise impacted communities, it was impossible for local zoning

authorities to cope with expanding operations and noise at nearby airports, and that the proposed funding limitations would seriously compound the airport operators' ability to work with local communities to mitigate such problems.

FAA Response: This final policy will not affect the use of PFC funds for noise mitigation projects. Additionally, the final policy has clarified that there is no retroactive AIP funding limitation.

Issue: Court ordered noise remediation measures. One airport operator, while finding no general objection to the proposed limitations on PFC funding, pointed out an important exception that FAA had previously overlooked in its proposed policy: "the ability of the airport operator to utilize either AIP or PFC funding for noise remediation measures ordered or approved by a court or administrative agency."

FAA Response: FAA recognizes that an airport operator ordered by a court of competent jurisdiction, or under a court supervised approval procedure would have no choice but to proceed regardless of funding limitations. With the continued ability to use PFC funds, the operator will still have funding flexibility. The airport operator also may request an exemption to the policy for part 150 approval and thereby obtain approval to use AIP funds.

Issue: Published guidelines needed for FAA decisions on the "gray" areas. The Federal agency recommended that FAA develop and publish policy guidelines for approving mitigation measures for the so called "gray areas." Approval in this area is presently addressed on a case-by-case basis subject to regional FAA interpretation. A single national policy is needed in order to treat similar situations consistently and eliminate subjective decisions.

FAA Response: FAA recognizes the necessity for national consistency in the treatment of similar situations, while maintaining the ability to respond adequately to unique local compatibility problems. FAA intends to develop supplemental guidelines to accomplish these ends.

Issue: Disclosure requirements. The Federal agency recommended that FAA examine means of placing information relative to the use of Federal funding for noise mitigation (soundproofing, et al.) in the deeds to such properties.

FAA Response: FAA recognizes disclosure of aviation noise as a very important tool for state and local governments in informing and forewarning prospective buyers or tenants about the expected impacts of aviation noise on properties within noise impact areas. An aviation noise disclosure statement, somewhat similar to a flood plain disclosure statement, attached to property deeds is highly desirable. Avigation easements granting the right of overflight and the generation of associated noise are also encouraged, especially in conjunction with use of AIP funds for noise mitigation. FAA will continue its current policy of strongly encouraging all levels of government possessing such authority to require both formal aviation noise disclosure statements attached to deeds and avigation/noise easements also attached to property deeds.

NOTICE OF FINAL FAA POLICY

Accordingly, by this publication the FAA is formally notifying airport operators and sponsors, airport users, the officials of all public agencies and planning agencies whose area, or any portion of whose area, of jurisdiction is within an airport's Day-Night Average Sound Level 65 dB noise contours, as developed in accordance with FAA approved methodologies, and all persons owning property within, considering acquisition of property within, considering moving into such areas, or having other interests in such areas, of the following final FAA policy concerning future approval under part 150 and the use of AIP funds for certain noise mitigation measures.

FINAL POLICY

Beginning October 1, 1998, the FAA will approve remedial noise mitigation measures under part 150 only for noncompatible development which exists as of that date. Noncompatible development that potentially may occur on or after October 1, 1998, may only be addressed in part 150 programs with preventive noise mitigation measures. This policy will affect the use of AIP funds to the extent that such funding is dependent on approval under part 150. Approval of remedial noise mitigation measures for bypassed lots or additions to existing structures within noise impacted neighborhoods, additions to existing noise impacted schools or other community facilities required by demographic changes within their service areas, and formerly noise compatible uses that have been rendered noncompatible as a result of airport expansion or changes in airport operations, and other reasonable exceptions to this policy on similar grounds must be justified by airport operators in submittals to the FAA and will be considered by the FAA on a case-by-case basis. This policy does not affect AIP funding for noise mitigation projects that do not require part 150 approval, that can be funded with PFC revenue, or that are included in FAA-approved environmental documents for airport development.

Issued in Washington, DC, on March 27, 1998

/S/

John R. Hancock
Acting Assistant Administrator for Policy
Planning, and International Aviation