

N-96-01
I-A-440

The EPA Office of Noise Abatement and Control offered objections and comments to certain sections of the proposed Airport and Airway Improvement Act of 1979 and the Legislative Environmental Impact Statement, March 1979 Draft. No significant changes of the LEIS are presented in the "April Edition" that would alter the form or content of this offices comments.

COMMENT #1

THE EPA FINDS SERIOUS OBJECTION TO THE FORM AND CONTEXT OF SECTIONS 5 AND 6 OF THE PROPOSED LEGISLATION. WE ARE DEEPLY CONCERNED THAT THE FAA SEEK LEGISLATIVE REAUTHORIZATIONS THAT WOULD WORK A MODIFICATION OF THE NOISE CONTROL ACT OF 1972, AND ALLOW THE DOT/FAA TO DEVELOP A NOISE METRIC AND MEASUREMENT INCONGRUEOUS WITH THAT, ESTABLISHED BY THE EPA, WHICH IS NOW IN UNIFORM APPLICATION BY ALL OTHER FEDERAL AGENCIES. NOT ONE WORD OF THE LEIS ADDRESSES THE ENVIRONMENTAL IMPACTS OF SECTION 5 OF THE FAA BILL.

RATIONAL:

Section 5 directs the DOT/FAA to undertake noise research activities which the EPA already has responsibility for, and, in fact, has already accomplished. The history of the Noise Control Act is an attempt to resolve technical and institutional barriers to nationwide planning and noise mitigation strategies. A most basic technological problem existed in the description of sound and the impact of noise upon public health and welfare. In 1972, acoustical research had yet to establish common terms of measurement. Every major federal agency had recognized the impacts of noise upon the mis-

sions and interest within their jurisdiction and responded with a wide range of preferences. Some were compatible with others, many were not. The public and those in need of manageable policies of acoustical measurement were without recourse. The Congress specifically attempted, in Sections 4 and 7 of the Noise Control Act, to resolve the problem. The EPA was mandated to coordinate the programs of all federal agencies relating to noise research and noise control and to report back to Congress with recommendations as to an effective measure of noise.

The Act as well directed the criteria to be applied in the establishment of noise description-directing that noise be measured upon a basis that reflected that effects upon human health and welfare. In 1973, the EPA reported that the technological link was to be found in the use of a dB(A) measurement. B(A) is the measurement of sound pressure levels on the a weighted scale of human hearing. More importantly, the EPA expressed the need for a methodology that could cumulatively express the levels of the environmental noise and lead research in the establishment of an environmental base line of acoustical impacts upon people.

In the seven years since the passage of the Noise Control Act significant direction has been found in the utilization of dB(A) measure d sound and the Ldn cumulative noise descriptor. All federal agencies, with the notable excetion of the DOT/FAA have accepted the use of the dba/Ldn measures. In addition, State and local governments are now using the dBA/Ldn descriptor exclusively in their comprehensive noise prevention programs. The federal role in leading this process has been significant. HUD revised 1390.2. Noise stand-

ards adopt the Ldn descriptor and require it as a part of all 701 planning and A-95 environmental review processed.

Fifteen federal agencies are actively engaged in noise research. In the years 1973-1978, Federal Noise Research Funding has exceeded 220 million dollars, more that 60% of which have been funded for programs aimed at reducing aircraft generated noise. (Federal Noise Research. EPA 550/9-78-308 at pp II-4-5). Recognizing the substantial commitment of the Federal Government to solve problems of noise and the fact that consensus has been achieved in both the metric and cumulative descriptor of noise, serious arguments must be made in the public interest against such proposals to reinvent the wheel. Moreover the EPA objects to the provisions of section 5 without the inclusion of any written commitment that the system relate to measures of human hearing or to standards for the protection of public health and welfare developed by the EPA under the authority of the Noise Control Act.

The FAA holds steadfast to the EFNdB and NEF descriptors, neither of which are measures directly relating to the scale of human hearing nor directly equitable with any other source of noise then the sound of airplanes. Five years have passed since the EPA directed that all federal research focus upon a descriptor that can directly equate the noise produced from all major sources. Yet the FAA has failed to uniformly adopt the db(A)/Ldn descriptors. That represents \$110 million dollars expenditure and an allocation of 66% of the federal noise research funding levels for the years 1974-1978, all for aviation noise. (Federal Noise Research, June 1978. EPA 550/9-78-308.pp II-4) yet the FAA proposes to establish a new noise metric and system of aviation noise measurement.

COURSE OF ACTION:

(i) Major Revision - Section 5 of the proposed legislation be replaced by the following:

Within 90 days of the enactment of this Act, the secretary shall in coordination by the Administrator of the Environmental Protection Agency:

(1) Hold hearing before a panel of 3 administrative law judges nominated by FAA, EPA, and OMB respectively to review and make final determination upon - The Airport Noise Regulatory Process. NPRM-76-24, proposed rule making before the DOT/FAA; and

(2) Adopt dB(A), and Ldn as the measures of sound to be uniformly applied as the noise descriptor applied at airports and areas surrounding such airports; and

(3) Establish an interagency committee to review the procedures for calculating and depicting the noise descriptors established in (2) above, and adopt such a procedure within 180 days of enactment of this Act that shall account for the noise emissions of individual aircraft. The manner and characteristics of each aircraft as flown, the frequency of operations of such aircraft at air airport, the time of day or night, but are relevant to full consideration of the public health and welfare characteristics of sound exposure as determined by the Administrator of the EPA.

(ii) Minor Revision - (a) Change the second line of Section five by deleting after consultation with "and insert" " in coordination by" - (b) Strike "and" from the second to last line of Section 5, strike to period at the end of the last sentence of Section 5 and insert a comma, and add the phases:
" and the time of such flights adding a 10 dB(A) penalty for flights

between the hours of 10 dB(A) penalty for flights between the hours of 10 pm and 7 am; as can be efficiently and relevantly determined in full consideration of the public health and welfare determinations of sound exposure as determined by the Administrator of EPA."

(iii) Review - The EPA urges that submission of the bill be delayed until a lawful and adequate discussion of the environmental impacts of Section 5 be included in the LEIS. This consideration should speak directly to the impact of Section 5 upon all federal noise research should the FAA refuse to adopt dB(A) and Ldn as the noise descriptors of sound.

COMMENT #2

THE EPA FINDS THAT THE LEIS SUBMITTED FAILS TO ADDRESS A SIGNIFICANT ALTERNATIVE TO THE PROPOSED BILL WHICH IS PRESENTLY BEFORE THE FAA IN FORMAL RULE MAKING, THIS CONSTITUTING A VIOLATION OF SECTION 102.C iii OF THE NATIONAL ENVIRONMENTAL PROTECTION ACT. A FULL AND ADEQUATE COMPARISON OF MANDATORY AND DISCRETIONARY AIRPORT NOISE PLANNING CONDITIONED UPON ISSUANCE OF AN FAA PART 139 CERTIFICATION SHOULD BE INCLUDED IN THE LEIS TO ALLOW AN INFORMED BASIS OF PUBLIC AND CONGRESSIONAL DECISION MAKING.

RATIONAL:

The EPA/ONAC offered comments upon the March 1979 draft LEIS, neither of which have been satisfactorily answered. The EPA identified that the bill (section 6) proposes noise exposure assessment and noise impact abatement plans in direct conflict with the Airport Noise Regulatory Process, proposed by the EPA, and before the FAA

in formal rulemaking procedures under the Noise Control Act. The March LEIS wholly failed to address this significant alternative to the proposed bill, and the EPA, therein, asserted that such a substantial omission of environmental analysis, violates NEPA Section 102.C iii. The EPA urged at that time the LEIS should contain a full and adequate comparison of mandatory and discretionary FAA regulatory processes, with environmental justifications.

Notably, the "April Edition" contains a two page insert titled "Noise Impact Assessment and Abatement Plans," (at page VIII-24) that responds with an unacceptable expression of the FAA's view against mandatory airport noise planning. The EPA would suggest that the addition is not incorporated in the proper sections of the LEIS. Where such a direct alternative to national policy is currently before the very agency herein proposing legislation, the LEIS is obligated to analyze it under this section on alternatives. Secondly, the EPA's proposed regulatory process represents an urgent federal need for noise abatement and for the FAA to act contrary prior to a final determination of the issue represents a "irreversible and irretrievable commitment of resources". Therefore the LEIS should address the issue as such, especially where the LEIS offers a chapter with that as its title.

Finally, the EPA wholly disputes the content and validity of the discussion to be found at page VIII - 24. There in, the FAA discounts any form of compulsory noise abatement planning as illogical... "an a priory assumption of the need for airport noise planning..." "A compulsory approach would require that assessment of noise impacts be performed whether or not the airport proprietor or cognizant planning authorities determined such planning was neces-

sary." The EPA would suggest that this is ridiculous and contradicted by data provided in other sections of the same document. At page IV - 29 of the LEIS, the FAA states that "the most significant environmental impact associated with airports and aircraft which use them is noise." Furthermore, the LEIS cites an FAA report acknowledging that, "a 1974 DOT study of 23 major U.S. airports identified 5 million people located within the 30 NEF contours (areas of considerable noise annoyance) and 0.5 million within the 40 NEF contours (high noise problem areas)." Clearly, airport noise planning is necessary. It certainly isn't a mere "a priori" speculation. The reasoning of the LEIS isn't justified by or consistent with other sections of the same document. Nor is the discussion balanced by one statement expressing the reasons supporting the EPA's proposed regulatory process. The discussion merely asserts it is illogical and, possibly duplicative of FAA requirements. Although the FAA has been studying this process for 2 1/2 years and spending millions on environmental research on this topic, no data or environmental analysis is offered.

COURSE OF ACTION:

The LEIS should not become final, nor should the submission of legislation proceed until an adequate and lawful analysis of alternative national policy, namely, the Airport Noise Regulatory Process, NPR UR 76-24, be fully and adequately discussed.

COMMENT #3

THE EPA FINDS THAT THE LEIS HAS NOT INCORPORATED THE ENVIRONMENTAL COMMENTS PRESENTED IN 13 REGIONAL MEETING HELD IN DEVELOPMENT OF THE PROPOSED LEGISLATION AND THE LEIS HAS NEVER BEEN CIRCULATED TO THE PARTIES

THAT DIRECTLY PARTICIPATED IN THE PROCESS. BOTH OMISSIONS ON THE PART OF THE FAA REPRESENT VIOLATIONS OF THE SPIRIT OF NEPA, AND THE DIRECT ORDERS GOVERNING THE LEIS PROCESS MANDATED BY THE COUNCIL OF ENVIRONMENTAL QUALITY AND THE FAA ITSELF.

The EPA has questioned the procedural adequacy of the draft LEIS. The FAA established a task force, and held a series of national conferences to obtain the views and suggestions of elected and appointed officials at all levels of government and with representatives of the aviation community on the scope and content of the airport and airway program. Meetings were carried out in 13 U.S. cities, attended by mayors, county executives, state legislators, aviation officials, air carriers, and airport proprietors. Yet, other than the report citation, no environmental comments of the participants were discussed in the legislative EIS. Of greater concern to the Agency, the LEIS has never been circulated to the parties that directly participated in the process, and the FAA has not requested comments upon the adequacy of the LEIS from the public in direct violation of Section 1506.8 of the FAA's own standards for circulation and comment upon legislative environmental impact statements.

COURSE OF ACTION:

The LEIS should not become final, nor should the submission of legislation proceed until an adequate and lawful circulation of the LEIS to all registered participants in the Improvement Act Hearings and those relevant environmental comments to included in the environmental process of the LEIS.