



U.S. Department
of Transportation

**Federal Aviation
Administration**

Memorandum

Subject: **ACTION:** Program Guidance Letters 05-4 About §§189, 322, and 324 in Vision 100-Century of Aviation Reauthorization Act: Guidance For Funding Mitigation Projects for Aircraft Noise less than 65 DNL, Public Availability of Noise Exposure Maps, and Determining Eligibility Of Airport Noise Compatibility Projects In Areas of Significantly Reduced Noise Exposure

Date: June 3, 2005

From: Acting Manager, Airports Financial Assistance
Division, APP-500

Reply to V. Catlett:x78770
Attn. of:

Manager, Community and Environmental Needs
Division, APP-600

To: PGL Distribution List
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AGC-600, AEE-1

05-4.1 Section 189 – Limitation on Approval of Certain Program Measures Outside the DNL 65 dB NEM Contour – Vicki Catlett (202) 267-8770.

Section 189 of Vision 100 amended 49 U.S.C. section 47504(b), formerly Section 104 of the Aviation Safety and Noise Abatement Act (ASNA) by adding new subsection (b)(4). This subsection prohibits FAA from approving Noise Compatibility Program (NCP) measures in Fiscal Years 2004 through 2007 that require the expenditure of Airport Improvement Program (AIP) funds to mitigate noise of less than DNL 65 dB. This is the level of cumulative aircraft noise exposure below which residential and most other land uses are considered compatible under federal land use compatibility guidelines in 14 C.F.R. Part 150, Appendix A, Table 1.

If a sponsor's recommended part 150 measure encompasses land areas both within and outside the DNL 65 dB, then the FAA may fully approve the measure under part 150, only with respect to the area within the DNL 65 dB. The other portion must be *“Disapproved for purposes of Part 150 with respect to Airport Improvement Plan (AIP) funding. Section 189 of Public Law 108-176, Vision 100-Century Of Aviation Reauthorization Act, December 12, 2003, specifically prohibits FAA approval of Part 150 program measures that require AIP funding to mitigate aircraft noise outside DNL 65 (through Fiscal Year 2007). Section 189 does not preclude the use of airport revenue or PFC funding outside DNL 65 dB.”*

The legislation precludes *FAA approval* of recommended NCP measures to mitigate noise outside DNL 65 dB if the measures require AIP funds. Section 189 does not:

- (1) Preclude an airport sponsor from evaluating and recommending measures in an area less than DNL 65 dB as part of its NCP.
- (2) Preclude FAA approval of such measures if they do not require the expenditure of AIP funds (i.e., the measure may require no expenditure of funds). An airport sponsor may use sources other than AIP, such as passenger facility charges or airport revenue, to fund measures that FAA has disapproved under Part 150 with respect to AIP funding in accordance with Section 189.
- (3) Halt AIP funding for measures previously approved under Part 150.
- (4) Affect contiguous parcels to complete a project area (section 810.b. of Order 5100.38B).
- (5) Affect AIP funding that does not require Part 150 approval including the soundproofing of buildings used primarily for educational or medical purposes under 49 U.S.C. section 47504(c)(2)(D). Grants to soundproof schools and hospitals are not affected because an FAA-approved Noise Compatibility Program is not required under Section 47504.

If the airport sponsor's NCP includes recommended measures for FAA approval for areas outside the DNL 65 dB contour, then the sponsor must still meet eligibility criteria set forth in the FAA's July 25, 1995, memorandum and paragraph 810b of the Airport Improvement Program Handbook, FAA Order 5100.38B. That is: The airport sponsor must demonstrate that the local land use planning authority with responsibility for planning in the area surrounding the airport has adopted alternative land use compatibility guidelines, showing the changes in land use criteria, and the NEM must depict the locally determined standard. The NEM and NCP must identify the area as incompatible and recommend mitigation measures. The airport sponsor's mitigation measure(s) within any contour outside DNL 65 dB must otherwise satisfy part 150 approval criteria (section 150.35).

The sponsor's application for approval to collect and use passenger facility charges for projects in areas outside DNL 65 dB must include evidence that, but for Section 189 of Vision 100, the measure would qualify for approval under Part 150 (see item (2), above for required evidence). Where the sponsor has prepared an NCP, the application must show that the measure was disapproved solely because of Section 189.

05-4.2 Section 322(b) - Public Availability of Noise Exposure Maps – Vicki Catlett (202) 267-8770.

The FAA has altered the minimum map scale in Appendix A of Part 150 – from 1 inch = 8,000 feet to 1 inch = 2,000 feet. This new scale will facilitate public review of noise and land use information from noise exposure maps and address the requirements under Section 322 of Vision 100 to make the information available to the public on the Internet via the FAA website.

05-4.3 – Section 324 – Determining Eligibility of Part 150 Noise Projects After Noise Exposure Maps Have Been Revised Because Noise Impacts are Significantly Reduced or Increased – Vicki Catlett (202) 267-8770.

The following supersedes section 03-2.1 of Program Guidance Letter 03-02, dated August 4, 2003, and that PGL is cancelled.

Section 324 of Vision 100 requires an airport sponsor to file new NEMs showing significant noise decreases, in addition to the long-standing requirement to show new noncompatible uses. Section 150.21(d) provides new requirements regarding significant reductions in noise and contains existing requirements for NEM updates when there is a significant noise increase.

Regional and Airports District Offices should determine the eligibility of part 150 noise projects based on the following instructions.

Absent information to the contrary, NEMs on file with the FAA for less than 5 years may be presumed to be current and project eligibility may be determined using either the existing or forecast conditions NEMs on file with FAA. However, if there is information indicating that the NEMs on file with the FAA do not reflect recent significant changes that have occurred at the airport that would affect the noise contours, or if the NEMs are older than 5 years, the sponsor must certify the existing or forecast year NEM reflects current conditions at the airport, or the sponsor must submit updated NEMs. For significant increases in noise, you do not have to wait for the forecast year NEM update to program the project.

Case example:

What if noise has reduced significantly since the NEMs were certified by the airport sponsor and accepted by the FAA and the revised noise exposure map demonstrates that a noise project for which funding is requested is still experiencing DNL 65 dB or greater noise levels?

- (1) The project *may* be funded if the NCP shows the project was part of a measure that was recommended by the sponsor and approved by the FAA at the prevalent noise exposure level (i.e. a project to soundproof a home was part of a measure to soundproof residences located in the DNL 65 dB contour and the revised noise

exposure map shows that the project is for a home that remains within the DNL 65 dB noise level). Use the priority rating system with the *new* noise impact level to determine its significance in setting your funding priority.

- (2) The project *needs additional justification* to be funded if the project was not recommended for FAA approval *within the new noise contour*. The sponsor may need to revise its NEM and NCP to make it eligible. For example, the sponsor recommended acquisition of properties within the DNL 70 dB and sound attenuation within the DNL 65 dB. The area previously approved for acquisition is now located within the DNL 65 dB noise contour. The project is no longer eligible for acquisition. However, it may be eligible for sound attenuation if the sponsor consults with the public or updates its NCP. In cases of neighborhood equity, eligibility may be “grandfathered” if the remaining portion of the neighborhood within the project area is not substantial.


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Cancelled