

[The following article was originally published in *Airport Noise Report* newsletter on pages 116-119 in Volume 34, Number 29, September 2, 2022.]

Airport Noise Report



A weekly update on litigation, regulations, and technological developments

Volume 34, Number 29

September 2, 2022

NextGen Advisory Committee

NEWLY CITED NAC MEMBERSHIP QUALIFICATIONS WILL EXCLUDE COMMUNITY GROUPS

The qualifications newly cited by FAA for membership on its NextGen Advisory Committee exclude communities negatively affected by NextGen airspace procedures and NAC recommendations, Cindy Christiansen, a founder of the Aviation Impacted Communities Alliance, asserted at the NAC's Aug. 30 meeting.

It is unclear if the qualifications cited for NAC membership included in FAA's Aug. 17 *Federal Register* notice – soliciting membership applications for the next two-year NAC term following adoption of a new Charter – are new or just newly made public but they do not detail what requirements “Environmental Interests,” one of the stakeholder groups represented on the NAC, must have to join the committee.

The *Federal Register* notice states that NAC candidates must serve “as a senior executive and corporate officer in an aviation organization with equities in air traffic management and aircraft equipment modernization.” On its face, that language excludes community groups or other groups with environmental interests from serving on the NAC.

ANR asked FAA what qualifications are required for Environmental Interests groups to join the NAC. The agency replied that its Aug. 17 *Federal Register* notice and the new NAC Charter address that question but they do not.

The FAA recently rejected a request by the Congressional Quiet Skies Caucus (QSC) to add five additional seats for community groups to the NAC (34 ANR 105). However, that has not deterred grass-roots community groups impacted by NextGen noise from continuing to press their case to be included on the committee, which was formed to help FAA implement its NextGen program of airspace modernization.

The NAC has just one seat assigned for “Environmental Interests.” The NAC was formed in 2010 with that seat not filled. Eventually, the National Organization to Insure a Sound-controlled Environment (NOISE), a lobbying organization that represents elected officials of local jurisdictions that are affected by aircraft noise, filled the seat and still holds it.

NOISE is a 40-year-old organization formed prior to the implementation of NextGen. It is unclear from the organization's website how many members it currently has and how many of them are directly impacted by the noise from NextGen procedures.

The Aviation Impacted Communities Alliance was formed in June 2020 and is composed mainly of grass-roots community groups at the local, state, and national level who have been directly impacted by noise from NextGen procedures. The Alliance members are not elected officials or members of airport noise roundtables, two groups the FAA prefers to work with.

By providing only one seat on the NAC for "Environmental Interests" and rejecting the Congressional Quiet Skies Caucus effort to add additional community seats, the FAA puts NOISE and members of the Aviation Impacted Communities Alliance in competition for the seat. And by not specifying what qualifications are required for those seeking to fill the "Environmental Interests" seat, FAA has a free hand in selecting the group it wants in that seat. The question is whether the U.S. General Services Administration, which monitors federal agency compliance with the Federal Advisory Committee Act (FACA), would consider FAA's reluctance to add grass-roots community groups to the NAC as violating the letter or spirit of the Act.

Paul Fontaine, FAA's acting assistant administrator for NextGen, told the NAC members at their Aug. 30 meeting that FAA is pursuing a "transparent, diverse, and inclusive membership process" and urged current NAC members to reapply for their seats on the committee by the Sept. 19 deadline for doing so.

Noting that the requirement to reapply for NAC seats is a change from past procedure, Fontaine said it brings the NAC into compliance with the Federal Advisory Committee Act and DOT process, which implies that FAA did not meet NACA requirements earlier.

In a statement to ANR, the Aviation Impacted Communities Alliance said, "We are pleased the Congressional QSC letter, April 20, 2022, to the Department of Transportation had an impact on the FAA's NAC membership process. The FAA is taking more transparent steps by using a Federal Register Notice (FRN) for solicitation of membership and disclosing the qualifications. In contrast, the FAA's previous process automatically renewed members, did not post a FRN, and did not disclose the qualifications.

"We expect and encourage members of aviation-impacted communities to apply to represent "Environmental Interests" on the NAC. These individuals will strengthen and fulfill the NAC membership aim – "The membership must be equitably balanced in terms of points of view represented and functions performed." Additionally a strong "Environmental Interests" member will help address the [DOT Office of Inspector General] OIG identified barrier of community opposition to noise that continues to delay PBN implementation.

Christiansen Presentation

In a remote presentation to the NAC's meeting, held at Mitre Corporation headquarters in McLean, VA, Aviation Impacted Communities Alliance co-founder Cindy Christiansen said the following:

In an April 20, 2022, letter regarding NextGen Advisory Committee membership, the Congressional Quiet Skies Caucus stated to the Department of Transportation that "None of the [NAC] members represent communities that live under NextGen corridors and that are directly impacted by the recommendations of the NAC."

Now, based on the FAA's qualifications for NAC membership published in the August 17, 2022, Federal Register Notice, the FAA has crafted membership requirements that are even more exclusionary; candidates must serve "as a senior executive and corporate officer in an aviation organization with equities in air traffic management and aircraft equipment modernization." This means communities that are negatively affected by NextGen and this committee's recommendations will continue to have no seat at this FAA-created NextGen table.

The FAA's Federal Register Notice includes that NAC membership "must be equitably balanced in terms of points of view represented and functions performed", but there is no balance when one of the primary stakeholders is omitted and ignored. Without all of the legitimate stakeholder's voices, especially those who have been negatively affected by this committee's work, NAC deliberations cannot and will not achieve a balance of points of view.

The Federal Register Notice goes on to say that "To the extent practicable and in accordance with the Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government and the Executive Order on Diversity, Equity, Inclusion, and Accessibility, the membership of the NAC shall include persons of diverse backgrounds in race, ethnicity, religion, sexual orientation, and gender."

I encourage the FAA to look at its current NAC membership list to see how well it is doing on this practicality.

FAA Noise Policy Review

Darlene Yaplee, another co-founder of the Aviation-Impacted Communities Alliance (AICA), also made a remote presentation to NAC on NextGen and the FAA's noise policy review. It follows:

To date the FAA and NAC have failed to address the new NextGen created noise problem of frequent, high concentration of flights over narrow areas.

FAA Administrator Dickson's response to a March 2021 letter from the Quiet Skies Caucus stated: "We are bringing on board the Federal Mediation and Conciliation Service (FMCS) to assist with designing an inclusive and participatory policy review framework and process that prioritizes input from substantially affected stakeholders, including local communities" also, "We can provide update[d] briefings as the review gets underway."

September 10th will be one year after the FMCS agreement was signed. It is over 18 months since the FAA announced the noise policy review. To date, we have received zero update briefings and no inclusion.

The community "must-haves" for the FAA's noise policy review [include]:

- A timely, transparent roadmap with milestones, desired outcomes, and who, when and how stakeholder groups, including local communities, will participate;
- Policies to address the NextGen created noise problems based on:

- Analysis of N-Above at 45 to 65 dB-A noise levels for the airports in the NES, and comparing the correlation between N-Above and annoyance, versus the correlation between DNL 65 and annoyance; and analysis of separate thresholds for sound proofing (near airport)

versus procedure design (away from airport); and

- Compliance with [the Airport Noise and Capacity Act of 1990] ANCA which requires a system of metrics, not today's use of a single metric. This should be based on multi-disciplinary, independent experts and peer reviewed results.

- Consideration of the scientific research that has shown negative health effects from excessive noise;

- Demonstrated balanced points of view – not underweighting community, objectivity, and robustness for analyses and recommendations.

- The Quiet Skies Caucus rejected the FAA's Metrics Report (April 2020). This quality of work product is unacceptable.

- FAA to meet its ethical obligation to change regulations that are detrimental to the public, that are under its authority, and that do not require new legislation.

BWI Roundtable Member Addresses NAC

Deb Jung, a member of the Howard County (MD) Council and the DC Metroplex BWI Community Roundtable, spoke in person to the NAC at its Aug. 30 meeting.

The Roundtable is an initiative of the Maryland Aviation Administration that was formed in 2017 at the request of the FAA following a sharp increase in noise complaints after FAA implemented new air traffic procedure changes at BWI International Airport.

Jung said proposed airspace changes the Roundtable had proposed two years and nine months ago to reduce noise impact are still under review by the FAA. She urged the agency to proceed with the changes to airspace procedures as soon as possible.

"If successful, we will be the first Roundtable in the country to make these procedural changes. We are hoping we can lead the way to make these kind of changes everywhere," Jung told the NAC.

However, the 2021 Annual Report of the DC Metroplex BWI Community Roundtable notes that the flight path changes that the Roundtable seeks are "small, incremental changes that will help at the margins but will not solve the noise pollution problem that results from NextGen at BWI Marshall airport."

Among the unresolved problems at BWI Identified in the report are: the FAA has no plan to address the larger noise pollution problem caused by NextGen and the FAA's design process failed to consider communities as stakeholders because they have no legislative mandate to do so.