

# Airport Noise Report



A weekly update on litigation, regulations, and technological developments

Volume 30, Number 21

June 29, 2018

## *Litigation*

### **STATE OF MD FILES PETITIONS CHALLENGING FLIGHT PATH CHANGES MADE AT BWI, DCA**

On June 26, Maryland Governor Larry Hogan (R) made good on his promise to challenge airspace changes at BWI International and Washington Reagan National airports that have significantly increased noise impact on Maryland residents located under new concentrated NextGen flight paths.

The State of Maryland filed a petition with the U.S. Court of Appeals for the D.C. Circuit seeking review of FAA changes to the approach flight path for Runway 19 at Reagan National (DCA) and asserting that FAA had failed to conduct the appropriate environmental review of them.

In addition, the State of Maryland also filed a separate administrative petition with the FAA requesting a supplemental environmental assessment as well as revisions to area navigation routes and procedures for BWI airport.

“The FAA must follow required procedures before implementing changes to flight paths that impact thousands of Maryland residents,” MD Attorney General Brian Frosh asserted in a prepared statement.

*(Continued on p. 82)*

## *NextGen Advisory Committee*

### **NAC CHAIR SAYS COMMUNITY ENGAGEMENT IS NO. 1 PRIORITY FOR PBN IMPLEMENTATION**

Getting the public to understand and accept performance-based navigation (PBN) procedures will be the NextGen Advisory Committee’s number one priority as it moves to reduce aircraft delay in the crowded Northeast Corridor – the airspace between Boston and Washington, D.C. – NAC Chair and FedEx President and COO David Bronczek announced at the June 27 meeting of the NAC.

He and FAA Acting Administrator Dan Elwell urged airline officials to take a more active role in FAA community engagement efforts, which they believe are crucial to successfully implementing PBN procedures in the Northeast Corridor, where over half of the delays in the U.S. airspace system occur.

Airlines need to do a lot more in terms of community involvement “or we’re not going to get there,” warned Bronczek, who has agreed to chair the NAC for two more years.

At its June 27 meeting, NAC members approved a new charter formally turning the group into a federal advisory committee that operates under the Federal Advisory Committee Act and no longer an advisory committee managed by the RTCA

*(Continued on p. 83)*

## *In This Issue...*

***Litigation ...*** The State of Maryland challenges FAA’s environmental review of changes to an arrival path at Reagan National Airport; demands that FAA prepare a supplemental EA for flight path changes at BWI; challenges FAA catexing of BWI arrival procedures - p. 81

***NextGen Adv. Committee ...*** Community engagement will be the number one priority of the NAC in implementing PBN procedures in the Northeast Corridor airspace, NAC chair says. Representative of community group tells NAC that living under concentrated NextGen flight paths has “devastated” lives; says NAC needs more community representation and/or dedicated forum for addressing community impacts of NextGen - p. 81

***NASA ...*** X-59 QueSST is the new name for NASA’s experimental supersonic X-Plane, which was formerly known as the Low-Boom Flight Demonstrator, the agency announces - p. 84

## ***Litigation, from p.81***

“Thousands of Marylanders have had their lives disrupted since the new flight paths were implemented without the appropriate level of environmental review, public input, and transparency.”

Said Gov. Hogan, “Maryland is taking this important action on behalf of our many citizens who continue to suffer from intolerable noise pollution due to the NextGen program’s flight paths. Our administration remains committed to bringing relief and restoring the quality of life for tens of thousands of Marylanders living around our airports.”

### **Lawsuit Filed Beyond 60-Day Window**

The State of Maryland filed its lawsuit against FAA beyond the 60-day window allowed under federal law to challenge FAA final orders in federal courts of appeal.

At the end of March, the D.C. Circuit dismissed as untimely a similar lawsuit challenging flight path changes at DCA filed by residents of the Georgetown area of Washington, D.C. (30 ANR 37). A three-judge panel of the Court found there were no grounds for filing the lawsuit beyond the 60-day window. The plaintiffs are currently seeking a rehearing of the case. However, a different panel of the Court allowed a similar lawsuit filed by the City of Phoenix to be filed late and ruled in favor of the the plaintiffs on the merits.

The flight path changes made at BWI and DCA were part of the Washington, D.C., Metroplex plan that FAA began implementing in 2014. FAA issued a Finding of No Significant Impact and Record of Decision on the project in December 2013, at which point the clock started ticking on the 60-day filing window.

ANR asked John Putnam of the Denver law firm Kaplan Kirsch & Rockwell, who represents the State of Maryland in its litigation and guided the City of Phoenix to its legal victory, how he will deal with the problem of the lawsuit being filed beyond the 60-day window.

“The limitations period issue will be fully briefed as part of the case coming up,” he replied.

The case is *State of Maryland v. Daniel Elwell, Acting Administrator of the FAA* (No. 18-1173).

### **FAA Petition**

In a separate petition with the FAA, the State of Maryland asked the agency to take the following action regarding flight path changes at BWI:

- Prepare a supplement to the D.C. Metroplex Environmental Assessment (EA) “in light of unanticipated and undisclosed impacts” associated with FAA’s recent airspace changes.

The petition contends that the EA did not show the actual proposed routes with sufficient specificity to allow residents and other stakeholders to determine exactly what changes were proposed and how they would affect particular homes, schools, parks, churches, etc.

- Undertake the review of categorical exclusions for Run-

way 33L and Runway 10 arrivals, as required by the National Defense Authorization Act; and

- Continue, accelerate, and expand efforts to adjust RNAV routes at BWI to improve compatibility with neighborhoods, including arrival routes to Runways 33L and 10.

“These steps are necessary because the noise impacts of the FAA’s route changes have caused greater community noise concerns than FAA predicted. These greater concerns are in large part due to the inadequate disclosure of the proposed airspace changes in the original D.C. Metroplex EA and contemporaneous categorical exclusions that never involved the surrounding community,” Maryland told FAA.

“These process failures are part of a nationwide problem with community engagement and communication on Metroplex and similar airspace efforts (including in Phoenix, Northern California, Boston and Southern California), which FAA has been working to address through improvements in community outreach, environmental documentation, and communications. The State of Maryland insists that its residents also receive the benefits of enhanced environmental process and community engagement.”

### **FAA Accused of Violating Defense Act**

The State of Maryland argued in its petition to FAA that the agency violated a provision of the National Defense Authorization Act (NDAA) that requires FAA to notify and consult with airport operators – and to consider using alternative flight paths – before granting a categorical exclusion to NextGen procedures enacted on or after Feb. 12, 2012, when NextGen procedures at Phoenix Sky Harbor International Airport went into effect.

A categorical exclusion (catex) allows FAA to assume that a flight procedure will have no significant environmental impact and is thus not subject to preparation of an EA or environmental impact statement (EIS).

Arizona Sens. John McCain (R) and Jeff Flake (R) added the provision to the NDAA in 2017 to force FAA to review controversial catexed flight path changes out of Sky Harbor International that outraged communities there (29 ANR 1).

The State of Maryland is now using the NDAA provision to demand that FAA review catexed RNAV arrival procedure changes for Runways 10 and 33 at BWI that were also implemented after Feb. 12, 2012.

FAA implemented those catexed procedures despite concerns expressed by the Maryland Aviation Administration that the procedures would lead to significant concentration of flight tracks over residential and other noise-sensitive areas outside the 65 DNL contour and cause a public controversy, an outcome that bars the FAA from granting a catex.

Maryland told FAA that it is aware of no review required by the NDAA conducted by FAA prior to enacting the catexed airspace provisions at BWI.

“FAA must discharge this mandatory duty imposed by Congress immediately and must consult with the State regarding the effects of the procedures subject to categorical exclusion,” the State told FAA.

## *NAC, from p.81*

standards organization.

Elwell said he wants the reconstituted NAC to become more “action-oriented” and to improve its collaboration with communities.

As evidence of the NAC’s desire to interact more closely with communities, Bronczek welcomed to the NAC meeting representatives of two grass-roots community groups formed to protest NextGen flight path changes in the Washington, D.C. – Baltimore area. They were each given two minutes to address the committee.

### **NextGen Has ‘Devastated’ Lives**

“It is not an overstatement to say that the implementation of NextGen has devastated the lives of residents in our communities,” Anne Hollander, who represents the Montgomery County, MD, Quiet Skies Coalition, told the committee.

“People under channelized flight paths are no longer able to go about their daily lives in peace. They suffer from sleep deprivation, loss of ability to concentrate, increased anxiety, inability to work in their own homes, damage to their health from both the relentless noise and the emissions, and damage to the most important economic asset they own: their homes.

“As the federal committee that advises the FAA about NextGen, we believe the NextGen Advisory Committee should be working with urgency to address the collateral damage to underlying communities from NextGen’s implementation,” Hollander told the committee.

In a prepared statement, she wrote: “According to the NextGen Advisory Committee’s *Blueprint for Success to Implementing PBN*, the input of community leaders is critical to the successful implementation of Performance-Based Navigation procedures. We couldn’t agree more. We believe that the current makeup of the NAC, which is dominated by industry representatives and which has only one community representative, is not consistent with that goal.

“In order to solicit appropriate community input nationally and foster a collaborative working relationship between the aviation industry and communities and their elected officials, we recommend that you include more community representation on the NAC and also establish a national forum for addressing community impacts. We are not looking to decrease safety or efficiency, but we do know that these objectives can be met without focusing the entire burden of metroplex air traffic on only a few communities under the new channelized flight paths.

“We further recommend that you address the following issues:

- Noise should be considered in tandem with flight procedure changes, not as an afterthought. NAC should recommend that flight procedure designers be trained to consider this.
- The current metrics used to ascertain whether noise causes significant impacts are completely insufficient to address the recurring impacts of noise from PBN procedures

(i.e., channelized flight paths). NAC should make recommendations for updating those metrics in accord with 21st century aviation.

- Studies and data are helpful, but studies should not be used to indefinitely postpone more concrete recommendations to address impacts on underlying communities. It doesn’t require hundreds of thousands of dollars to figure out that channelized flight paths disproportionately harm the people and communities underneath. NAC should address the harm from these existing paths before recommending further roll-out of PBN procedures in more communities around the nation.

- As mentioned above, NAC needs more community representation and/or a dedicated forum for addressing community impacts.”

### **Roundtable Given D-Minus Grade**

Also addressing the NAC was Paul Harrell, who represents the D.C. Metroplex BWI Community Roundtable, which is one of several roundtables formed at the request of the FAA at airports where NextGen flight path changes have caused a significant community outcry.

He called the development of these roundtables “a knee jerk reaction by FAA in hopes of diminishing the outrage and litigation evident in other metroplexes.” Harrell told the NAC that the experience of his roundtable with the FAA could be rated “no better than a D-minus.”

Harrell said a PBN working group told his roundtable it would address their noise problems but would not give its scope of work to the roundtable or allow input from the roundtable.

### **FAA Must Lead Community Engagement**

Nancy Young, vice president for environmental affairs for Airlines for America, recommended that the FAA develop a strategic plan for implementing a community engagement strategy that is based on the recommendations presented in the NAC’s 2014 *Blueprint for Success to Implementing PBN*.

The *Blueprint* calls for FAA to lead the community engagement effort, she stressed.

The goal of a community engagement strategy, Young said, should be to get communities to understand NextGen procedures and their benefits, at a minimum, and hopefully to obtain acceptance of them.

### **Little Substantive Discussion**

Asked for her reaction to the discussion on community engagement at the NAC meeting, community anti-noise activist Hollander told ANR, “I would say the significant focus on community engagement was quite encouraging but there was very little substantive discussion of how it should be accomplished.

“I sincerely hope the NAC will move promptly and decisively to engage aviation impacted communities in these issues going forward.”

## ANR EDITORIAL ADVISORY BOARD

**Peter J. Kirsch, Esq.**

Kaplan, Kirsch & Rockwell LLP  
Denver

**Vincent E. Mestre, P.E.**

Consultant  
Laguna Beach, CA

**Steven F. Pflaum, Esq.**

Neal, Gerber & Eisenberg LLP  
Chicago

**Gregory S. Walden, Esq.**

Akin Gump Strauss Hauer & Feld  
Washington, D.C.

## NASA

### NASA'S EXPERIMENTAL SUPERSONIC X-PLANE PROJECT HAS A NEW NAME: THE X-59 QUESST

*[Following is a June 27 news feature by Jim Banke of NASA's Aeronautics Research Mission Directorate.]*

So, what's in the name? Well, the "X-59" part is a nod back to American X-plane history, which kicked off with the world's first supersonic plane, the Bell X-1, famously piloted by Chuck Yeager in 1947 when it broke the speed of sound. Yeager nicknamed the plane "Glamorous Glenis" after his wife, according to NASA. The "QueSST" part of the X-59 moniker is sort of a NASA inside joke, one that acknowledges the space agency's long-running quest (get it?) for quiet supersonic technology, or SST.

The U.S. Air Force assigned the X-59 number to NASA's experimental supersonic plane and let the agency know on Tuesday, NASA officials said in a statement Wednesday (June 27). Before receiving its X number, NASA's supersonic plane project was called the Low-Boom Flight Demonstration mission. Lockheed Martin is building the jet for NASA to develop the technology needed for quiet supersonic aircraft for future commercial travel.

"For everyone working on this important project, this is great news and we're thrilled with the designation," Jaiwon Shin, associate administrator for NASA's Aeronautics Research Mission Directorate, said in the NASA statement.

The X-59 QueSST supersonic plane was included in the White House's 2019 budget request for NASA earlier this year as part of a \$633.9 million funding proposal for aeronautics research. But NASA has been developing the supersonic plane for years in pursuit of technology that would enable affordable supersonic transportation without the loud sonic booms that come with it.

Two other private projects are considering commercial supersonic travel as well. Virgin Galactic and Boom Technology are working together to build a supersonic jet capable of flying at twice the speed of sound — about 1,451 mph (2,335 km/h) — to cut the travel time from New York City to London down to 3 hours. Another company, Spike Aerospace, is developing its own S-512 Quiet Supersonic Jet, which would have similar performance. That New York-to-London trip typically takes up to 7 hours.

---

## AIRPORT NOISE REPORT

Anne H. Kohut, Publisher

Published 44 times a year at 43978 Urbancrest Ct., Ashburn, Va. 20147; Phone: (703) 729-4867; FAX: (703) 729-4528.  
e-mail: [editor@airportnoisereport.com](mailto:editor@airportnoisereport.com); Price \$850.

Authorization to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by Airport Noise Report, provided that the base fee of US\$1.03 per page per copy is paid directly to Copyright Clearance Center, 222 Rosewood Drive, Danvers, MA 01923. USA.