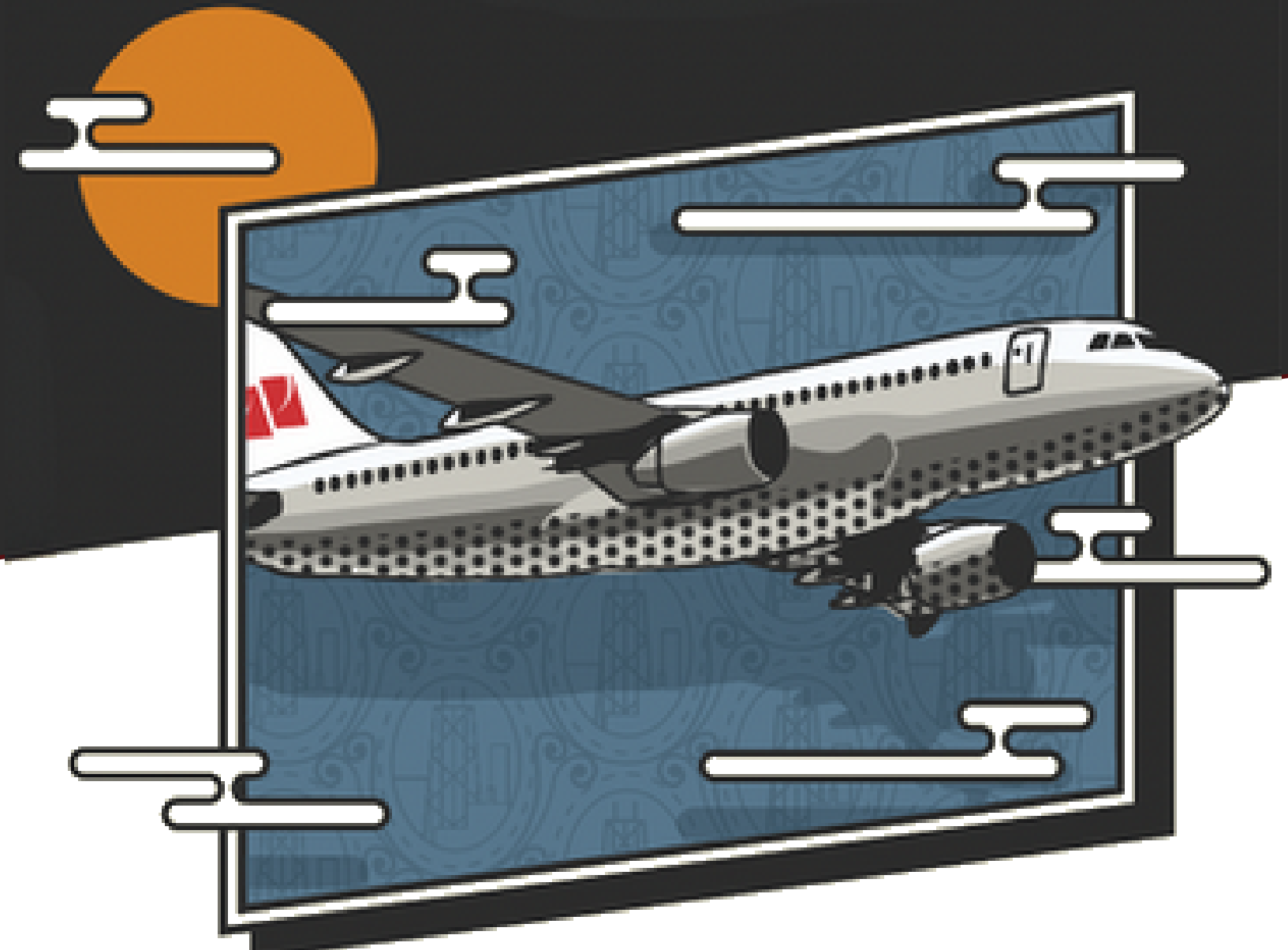




40th Annual
Airport Law Workshop



Session #10

Noise mitigation and community relations

Speakers

Eric Pilsk



Partner
Kaplan Kirsch

Don Scata Jr.



Deputy Director
Office of
Environment and
Energy, FAA

Overview

- Legal framework
- FAA Neighborhood Environmental Survey and Noise Policy review
- The uncertain future of noise law



AIRPORT SPONSOR LIABILITY FOR AIRCRAFT NOISE

Causby v. U.S.: Frequent, low overflights that substantially interfere with use and enjoyment of the property **can cause a taking of surface rights**

- *Griggs v. Allegheny County*:
 - **Airport proprietor is liable for aircraft noise from the airport**
 - Selection of location and orientation of runways dictated flightpaths
 - Failure to condemn necessary **aviation easements** = Inverse Condemnation
- Trespass and Nuisance

FEDERAL PREEMPTION: WHO CAN CONTROL AIRCRAFT NOISE

- U.S. sovereignty over navigable airspace – 49 U.S.C. §40103(a)(1)
 - FAA has exclusive authority over flight; **ALL** others preempted
- FAA controls noise at the source
 - Noise Abatement and Control Act (1968)
 - Directed the FAA to set noise standards for aircraft
 - 14 CFR Part 36 – Stage rating system
- *City of Burbank v. Lockheed Air Terminal*
 - *Non-sponsors cannot limit access*
 - Rehnquist dissent: *sponsors can limit access*
 - Proprietor's exception codified at 49 U.S.C. § 41713(b)

PROPRIETARY POWERS BEFORE 1990

Sponsors and non-sponsors may NOT adopt flight procedures or control noise at the source

- §40103(a)(1)
- *Gianturco; Burbank*

Sponsors may adopt reasonable, non-discriminatory, non-arbitrary access restrictions

- *E.g. curfews, noise caps*
- *Long Beach, Santa Monica*

Non-sponsors' powers

- Zoning and land use outside airport fence
- Regulate expansion beyond fence
- *Grapevine, Brook Park, Los Angeles*

PROPRIETARY POWERS AFTER 1990: ANCA/PART 161

- **Airport Noise and Capacity Act and Part 161**
 - Grand bargain: phase out louder stage 2 aircraft
 - Limit proprietary powers to restrict stage 3 and higher
 - Access restrictions now require FAA approval
 - VERY difficult; FAA has approved NO restriction since 1990; one stage 2 restriction
 - Applies to ALL public airports
- **Access restrictions ALSO subject to Grant Assurance 22**



PROPRIETARY POWERS AFTER 1990: GA 22

- Grant Assurance 22: Airport must be available for use on reasonable conditions. Compliance Manual ¶13.8:
- Restrictions must
 - 1) be justified by an existing noncompatible land use problem;
 - 2) be effective in addressing the identified problem without restricting operations more than necessary; and
 - 3) reflect a balanced approach to addressing the identified problem that fairly considers both local and federal interests.
- Safety and efficiency restrictions require FAA review and approval

PROPRIETARY POWERS AFTER 1990: GA 22

Factors the FAA balances:

- Part 150 and Part 161 compliance
- Is restriction a rational response to proven noise problem
- Were non-restrictive measures considered first
- Was same methodology used to establish compatibility and restriction
- Are compatibility standards the same for all noise sources
- Is noise problem defined based on 65 dB DNL standard
- Is sponsor facing noise liability

NOISE MITIGATION AND MEASUREMENT

- Aviation Safety and Noise Abatement Act of 1979, 48 U.S.C §§47501-47507
 - Required FAA develop a system to measure noise impacts and land use compatibility
 - Authorized 14 CFR Part 150 program
 - Gave immunity to airports that complete Part 150 Study
- Noise measurement metric
 - 65 dB DNL (CNEL in California) land use compatibility standard
 - AIP funding threshold
 - NEPA threshold
 - Flexibility for local governments to establish a lower standard of incompatibility

PART 150 NOISE COMPATIBILITY PLANNING

Two-step VOLUNTARY program

- 1. Noise Exposure Map – identify incompatible land uses*
- 2. Noise Compatibility Plan – plan to reduce incompatible land uses*

Why do airports participate?

- Access to FAA funding of approved measures
- Well-established comprehensive process
- Immunity from noise claims

NOISE COMPATIBILITY PLAN – PART 150

Identifies Measures to Reduce Land Use Incompatibility

- Incompatible land use = Noise Exposure Level DNL 65 dB or greater
- Public process
- FAA approval
- Certain elements are eligible for AIP/airport revenue funding
- Certain elements may require further approval

ENVIRONMENTAL REVIEW – NEPA

Noise Thresholds

- Significant impact
 - 1.5 dB increase over 65 dB DNL/CNEL
- Not significant but must disclose:
 - 3dB increase between 60 and 65 dB DNL/CNEL
 - 5 dB increase between 45 and 60 dB DNL/CNEL

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

As lead Federal Agency pursuant to the National Environmental Policy Act of 1969

U.S. DEPARTMENT OF THE AIR FORCE

As a Cooperating Agency pursuant to 40 CFR §1501.6(a)(1)

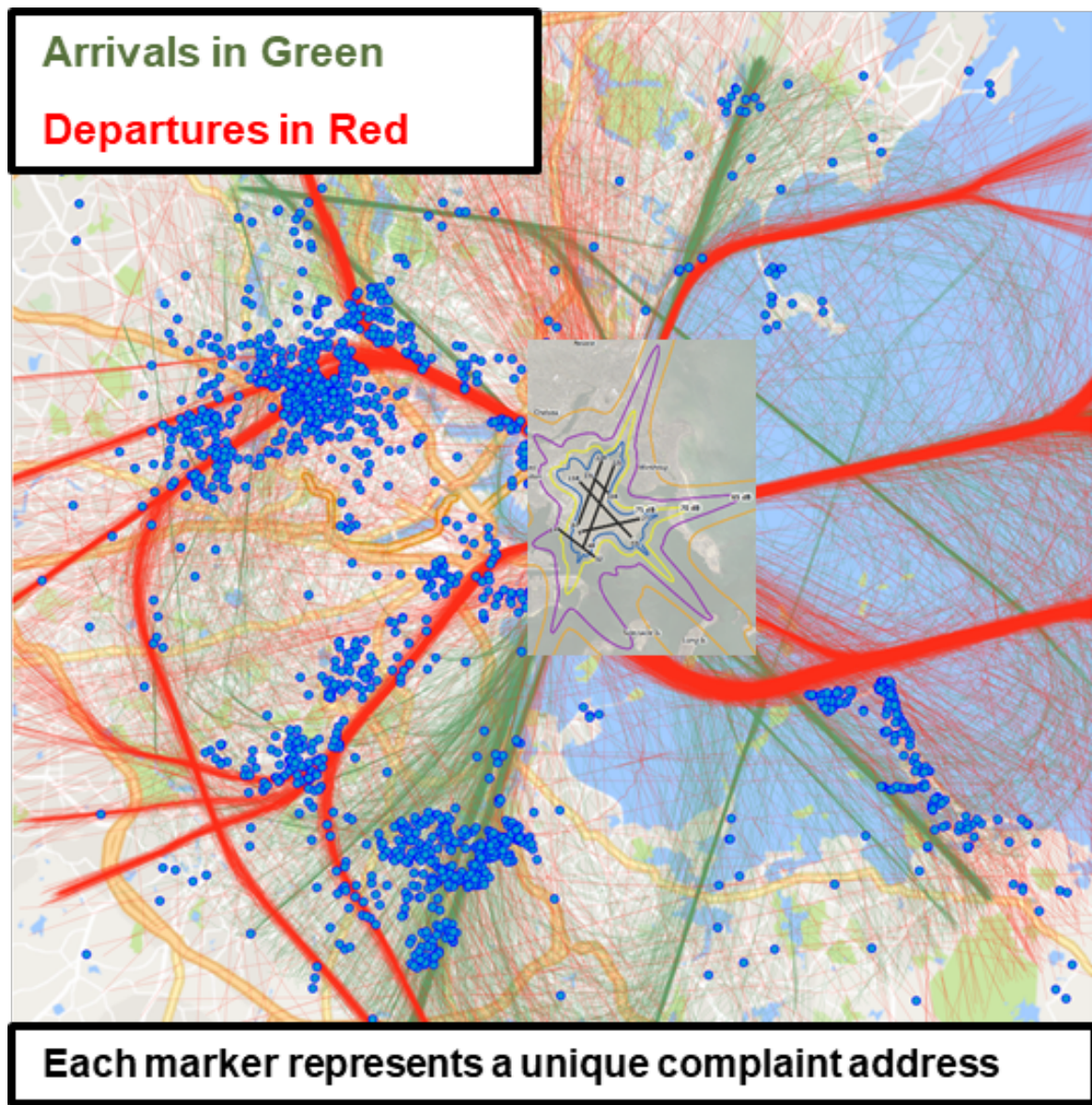
FINAL
ENVIRONMENTAL IMPACT STATEMENT

PROPOSED AIRFIELD SAFETY ENHANCEMENT PROJECT
Tucson International Airport
Tucson, Pima County, Arizona

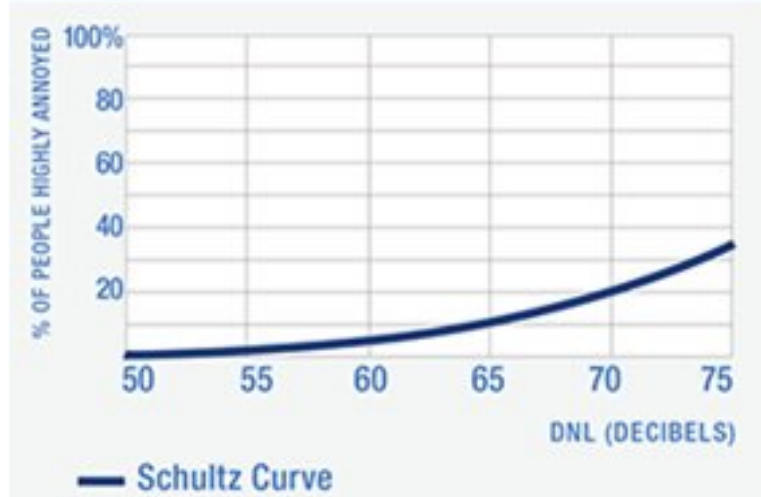
Abstract:

This Final Environmental Impact Statement (EIS) assesses the potential environmental impacts of the proposed Airfield Safety Enhancement Project (ASEP) at Tucson International Airport (TUS). This Final EIS is submitted pursuant to the following public law requirements: Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended. (42 United States Code [U.S.C.] § 4321 et seq.); Council on Environmental Quality

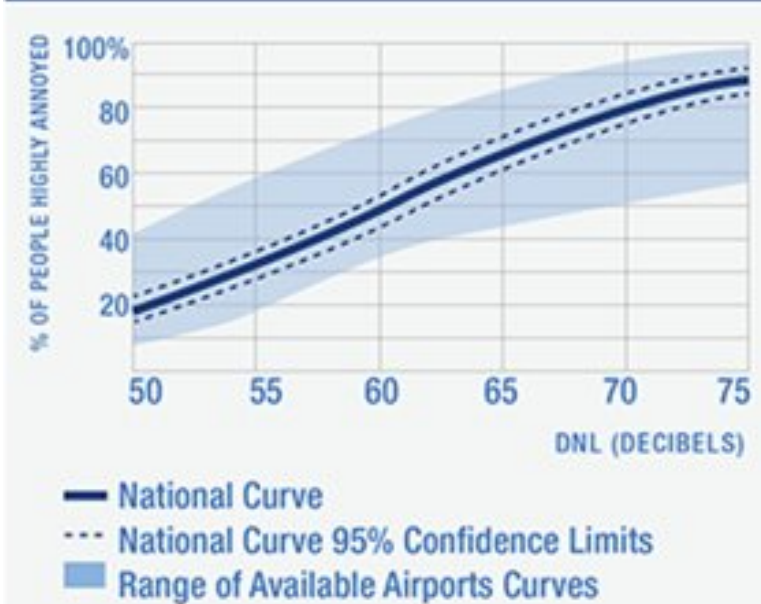
THE NOISE PROBLEM: THEN AND NOW



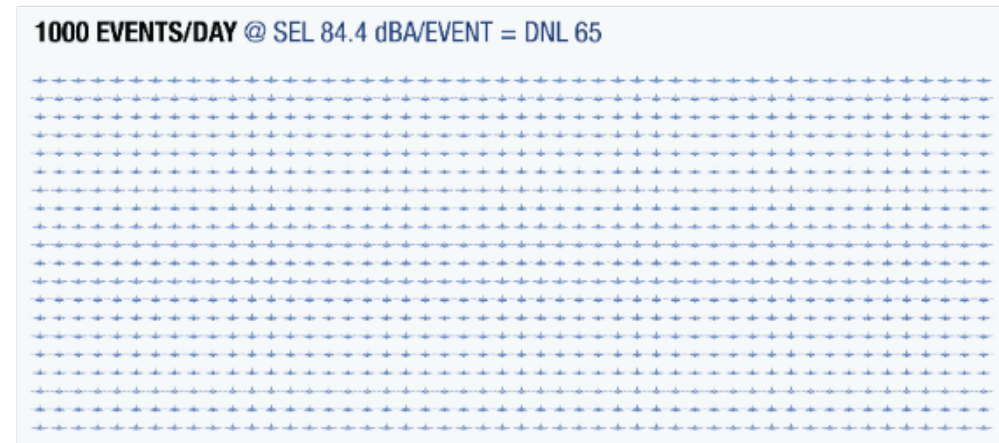
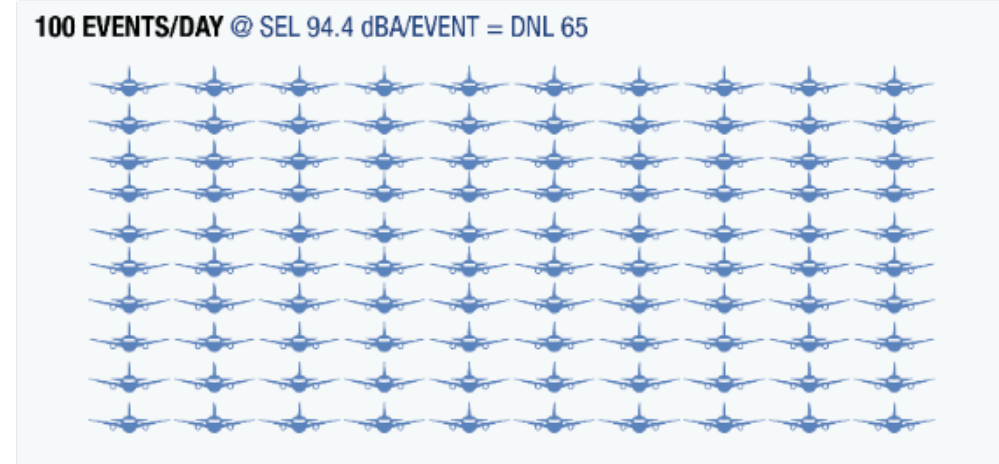
SCHULTZ CURVE



NATIONAL CURVE



EQUIVALENT OPERATIONS FOR DNL = 65



NOISE POLICY REVIEW FEDERAL REGISTER

NOTICE

- [Published](#) on May 1, 2023, initially with a 90-day comment period ending July 31, 2023. Comment period was extended an additional 60 days and closed on September 29, 2023
- Included link to a companion [framing paper](#), "*The Foundational Elements of the Federal Aviation Administration Civil Aviation Noise Policy: The Noise Measurement System, its Component Noise Metrics, and Noise Thresholds*"
- Created [Noise Policy Review landing page](#) which contains educational materials and videos, webinar recordings, and updates on policy review process



FEDERAL REGISTER
The Daily Journal of the United States Government



Notice

Request for Comments on the Federal Aviation Administration's Review of the Civil Aviation Noise Policy, Notice of Public Meeting

A Notice by the Federal Aviation Administration on 05/01/2023

PUBLISHED DOCUMENT

AGENCY:
Federal Aviation Administration (FAA), DOT.

ACTION:
Notice of public meeting; Request for comments.

SUMMARY:
The FAA invites public comments from interested individuals, entities, and other parties to review four key considerations of its civil aviation noise policy, in the context of noise metrics and noise thresholds. The civil aviation noise policy sets forth how the FAA analyzes, explains, and publicly presents changes in noise exposure from aviation activity: recreational and commercial fixed wing airplanes, helicopters, commercial space transportation vehicles, unmanned aircraft systems, as well as emerging technology vehicles (newer types of vehicles that will operate in U.S. airspace). The FAA will consider how changes to the civil aviation noise policy may better inform agency decisionmaking, the types of impacts it considers in making decisions (e.g., community annoyance, certain types of adverse health impacts highly correlated with aviation noise exposure), and potential improvements to how the FAA analyzes, explains, and presents changes in exposure to civil aviation noise.

DOCUMENT DETAILS

Printed version:
[PDF](#)

Publication Date:
05/01/2023

Agencies:
[Department of Transportation](#)
[Federal Aviation Administration](#)

Dates:
Comments: Send comments on or before July 31, 2023.

Comments Close:
07/31/2023

Document Type:
Notice

Document Citation:
88 FR 26641

Page:
26641-26647 (7 pages)

Agency/Docket Number:
Docket No.: FAA-2023-0855

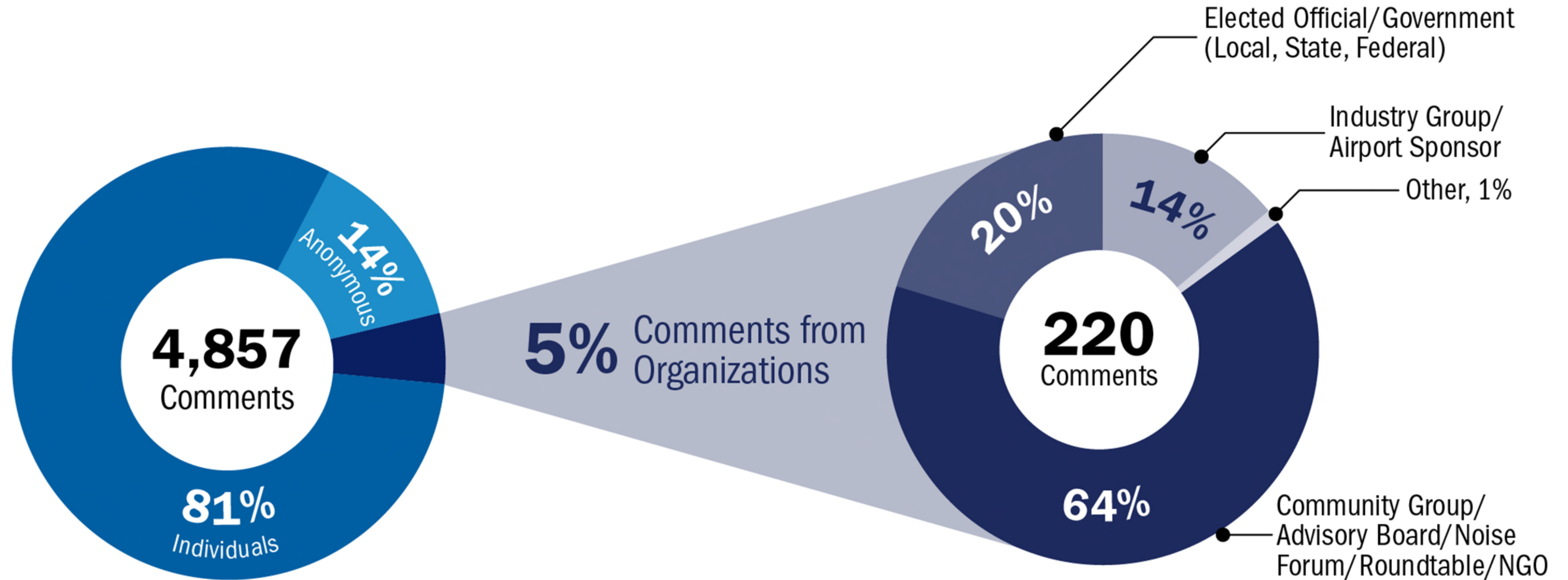
Document Number:
2023-09113

DOCUMENT DETAILS

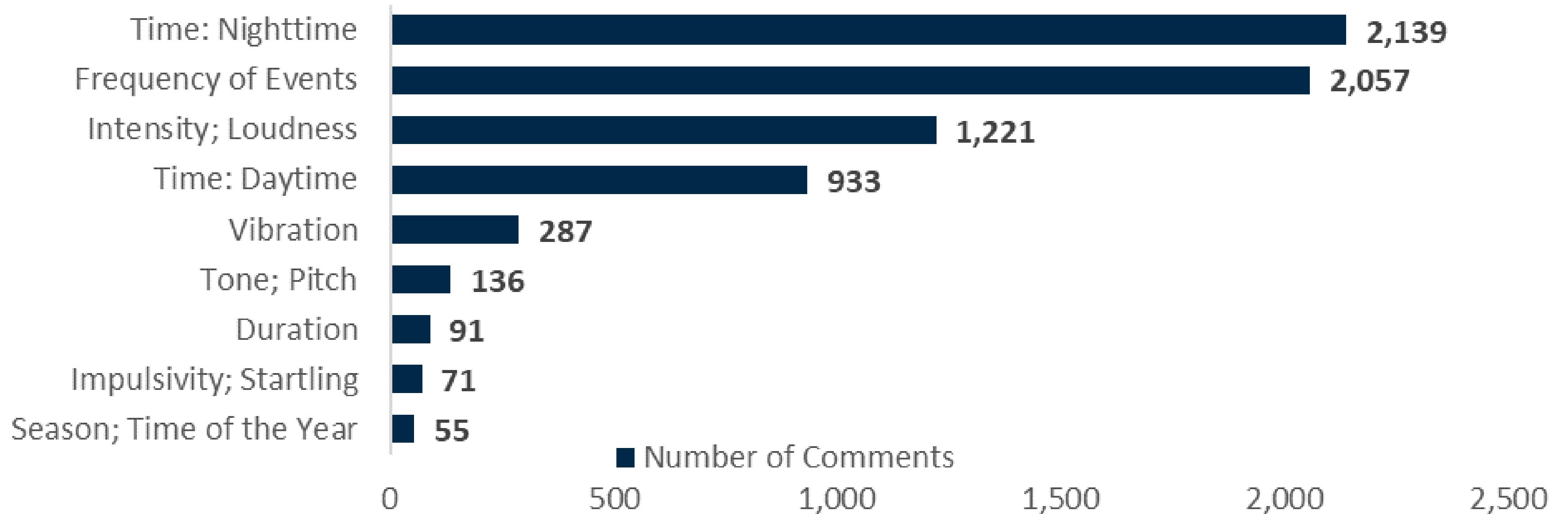
COMMENT REVIEW PROCESS AND STATUS

- Upon closure of the Noise Policy Review Federal Register Notice FAA began reviewing all 4,857 comments submitted to the docket
- Comment review process included:
 1. Developing a database of comments
 2. Categorizing the comments and generating statistical summaries of who submitted comments, where comments were submitted, and what topics were identified with regards to noise impacts and policy recommendations
 3. Identifying common themes from the comments and synthesizing relevant excerpts to aid in policy deliberations
- FAA completed the comment review and released a [comment summary](#) outlining common comment themes and statistics from stakeholders on September 27, 2024

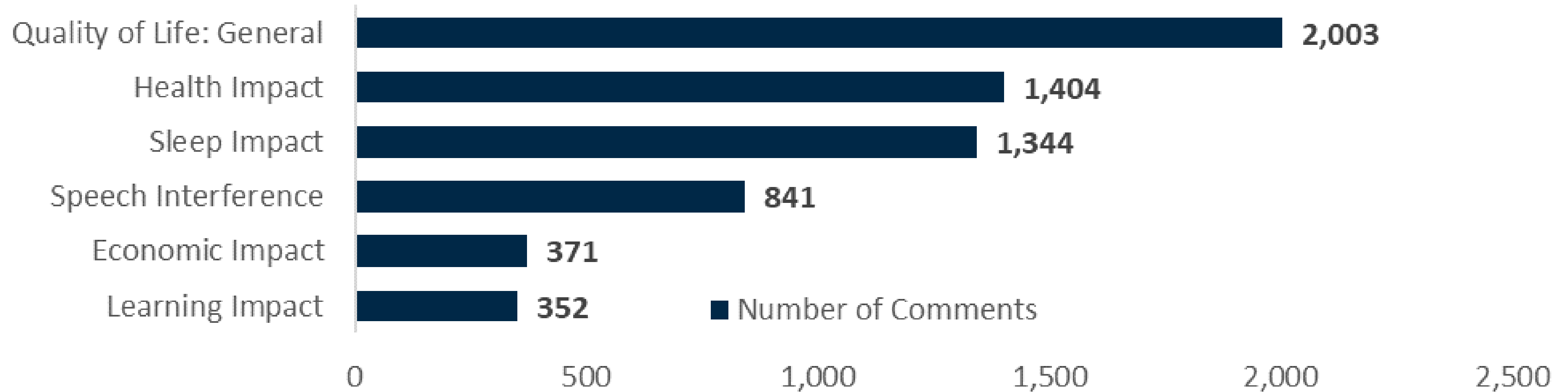
CATEGORIZATION OF COMMENTORS



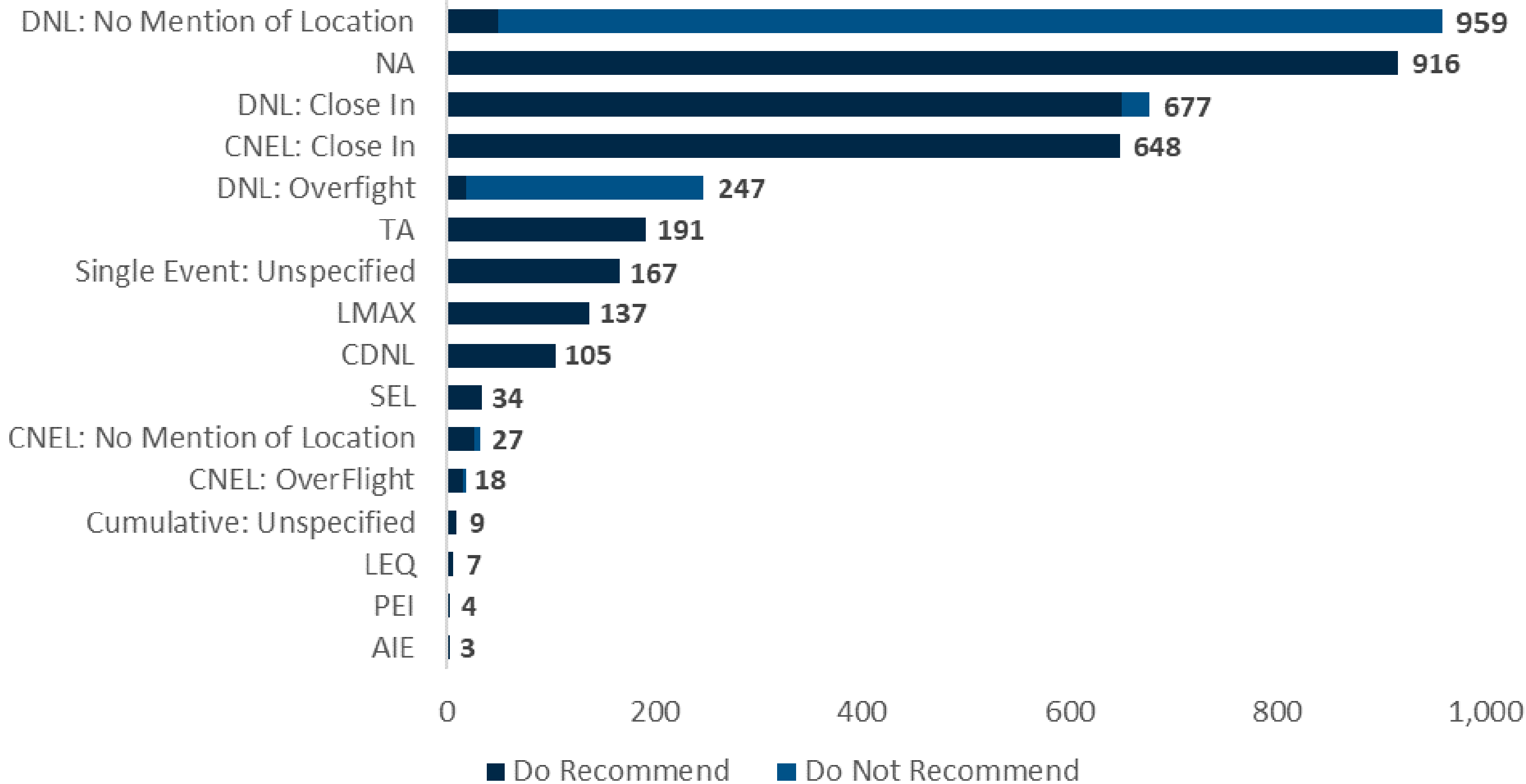
COMMENTS DESCRIBING NOISE CONCERN



COMMENTS DESCRIBING NOISE IMPACTS



SENTIMENT ANALYSIS: NOISE METRICS



COMMON THEMES BY GROUP

- **Community Groups:**
 - Believe sufficient data exists to proceed with changes to policy and metrics, based on the NES
 - Several community groups made specific recommendations for metrics and thresholds of Day-Night Average Sound Level of (DNL) 55 dB for close-in communities and Number Above Ambient (NAA) for overflight communities
- **Industry Groups:**
 - Not opposed to other metrics or revised thresholds, but do not support changes without further study of the policy implications
 - Research needed on whether other metrics are better at predicting human response to aircraft noise
 - Analysis needed on the economic impacts of possible policy options

KEY TOPICS ACROSS STAKEHOLDERS

- Overflight effects on residential communities affect quality of life in neighborhoods well outside DNL 65 dB
- FAA's noise policy should address both "close-in" and "overflight" communities. Many Community groups believe these affected communities should be treated differently
- Health impacts are a concern to many residents, and nighttime noise has an impact on health. These factors should be considered in policy making
- Before finalizing policy changes, the FAA needs to clearly outline its policy options and provide results of detailed policy analyses, including cost-benefit analysis, and complete health effects research
- Noise data should be shared early, often, and clearly with the public to foster trust and a positive relationship with the FAA

COMMON STAKEHOLDER RECOMMENDATIONS

- FAA needs to clarify its policy-making process
- As a decision-making metric, DNL is an adequate decision-making metric for land use compatibility for “close-in” communities
- Alternative/supplemental metrics are useful and might be appropriate for decision-making in some circumstances
- FAA needs to provide additional opportunities for stakeholder engagement

2024 REAUTHORIZATION – NOISE SECTIONS

- Section 364 – Hawaii air noise and safety task force
- Section 786 – Part 150 noise standards update
- Section 787 – Reducing community aircraft noise exposure
- Section 788 – Recommendations on reduction rotorcraft noise in District of Columbia
- Section 792 – Aircraft Noise Advisory Committee
- Section 793 – Community Collaboration Program
- Section 795 – Mechanisms to reduce helicopter noise
- Section 909 – Environmental review and noise certification

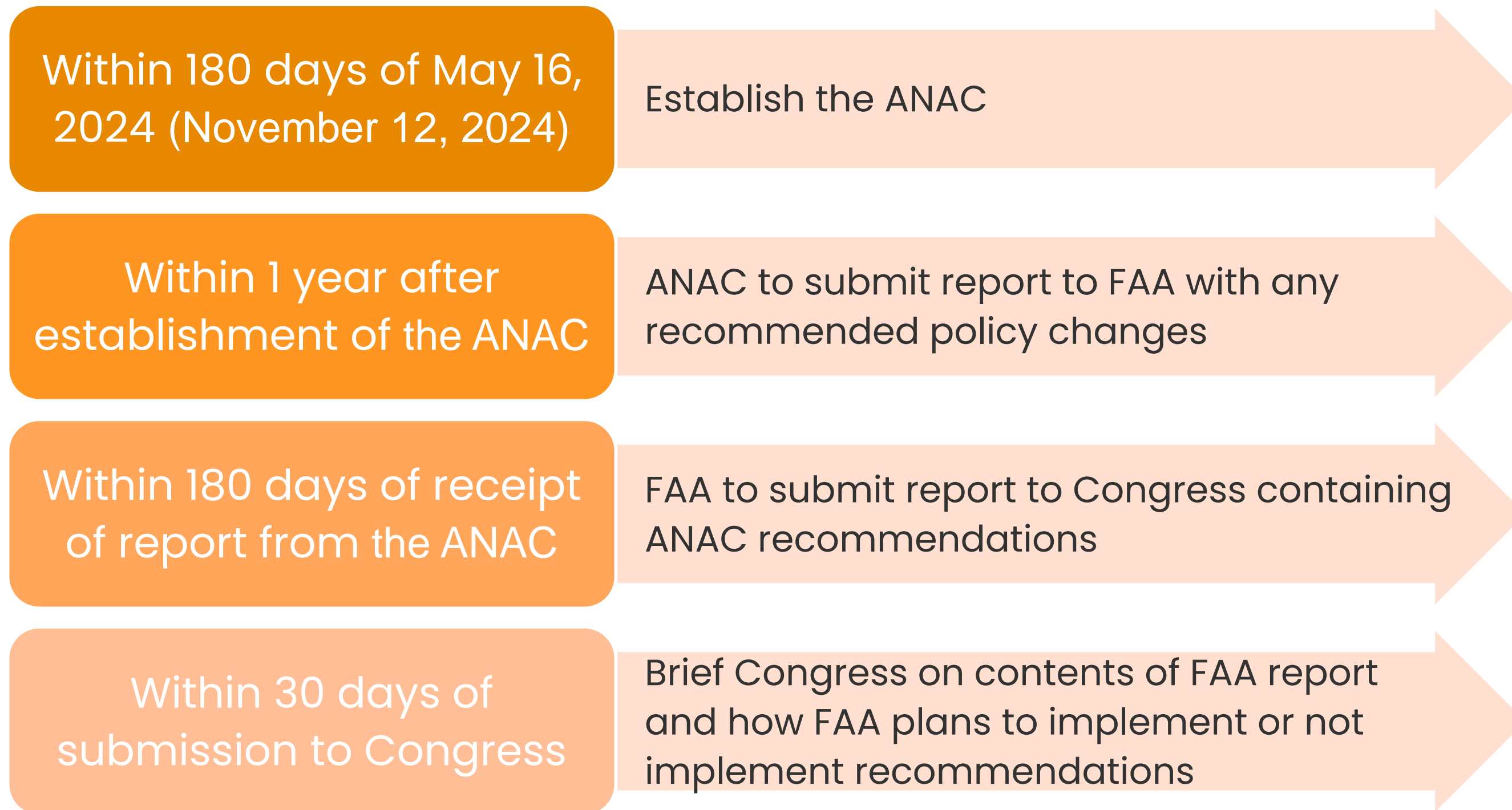
2024 REAUTHORIZATION – NOISE SECTIONS

- Section 792 – Aircraft Noise Advisory Committee
 - Requires FAA to establish an Aircraft Noise Advisory Committee (ANAC) to advise the FAA on issues facing the aviation community that are related to aircraft noise exposure and existing FAA noise policies and regulations
 - Duties will include: (1) evaluation of research on aircraft noise, (2) assessment of alternative noise metrics, (3) evaluation of 65 dB noise threshold (4) evaluation of noise mitigation strategies and community engagement
 - Must be formed pursuant to the [Federal Advisory Committee Act \(FACA\) of 1972](#)

SECTION 792: ANAC MEMBERSHIP

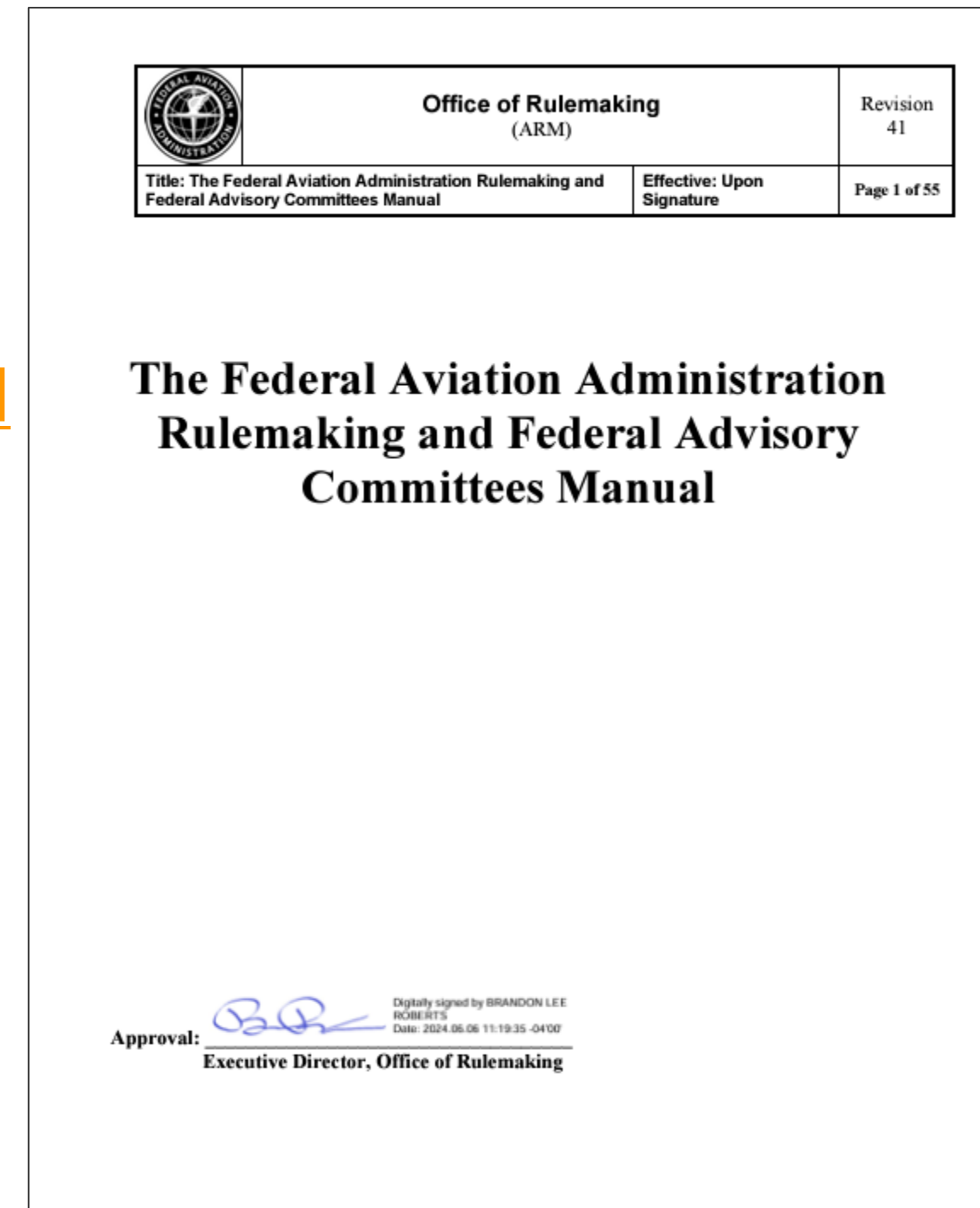
- At least one representative each of:
 - Engine manufacturers
 - Air Carriers
 - Airport owners or operators
 - Aircraft manufacturers
 - AAM manufacturers or operators
 - Institutions of higher education
- Representatives of airport-adjacent communities from geographically diverse regions

SECTION 792: ANAC TIMELINES



WHATS A FACA GROUP?

- Federal Advisory Committee Act of 1972:
 - Legal foundation defining how federal advisory committees operate
 - The law has special emphasis on open meetings, chartering, public involvement, and reporting
- FAA compliance with FACA requirements are outlined in [The Federal Aviation Administration Rulemaking and Federal Advisory Committees Manual](#)
- Outlines various requirements for creating a Federal Advisory Committee including:
 - Required documents (Charter, Membership Balance Plan, Public Notification)
 - Membership selection and solicitation
 - Member roles and responsibilities
 - Advance notice and openness of meetings
 - Public availability of meeting materials



NOISE POLICY REVIEW AND ANAC NEXT STEPS

- FAA has revised the Noise Policy Review approach and timelines to allow the ANAC to complete its work and issue its report before the FAA makes any decisions on possible noise policy updates
- FAA will complete the Noise Policy Review once the ANAC has submitted a report to the FAA with any recommended policy changes
- FAA is currently in the process of establishing the ANAC, and we anticipate sharing details on the ANAC charter and membership solicitation and selection process soon
- FAA is also in the process of creating a separate webpage for the ANAC
- In the meantime, for updates on the Noise Policy Review, ANAC, and next steps, as well as links to reference and educational materials, please refer to the landing page at: <https://www.faa.gov/noisepolicyreview>

THE UNCERTAIN FUTURE OF NOISE LAW

Implications of noise policy review

- Part 150/noise mitigation
- NEPA
- Part 161
- Grant Assurance 22

Managing community expectations

2014 FAA Reauthorization

Sec. 787 – Consider noise impacts of new flight procedures

Sec. 793 – Community Collaboration Program

THE UNCERTAIN FUTURE OF NOISE LAW

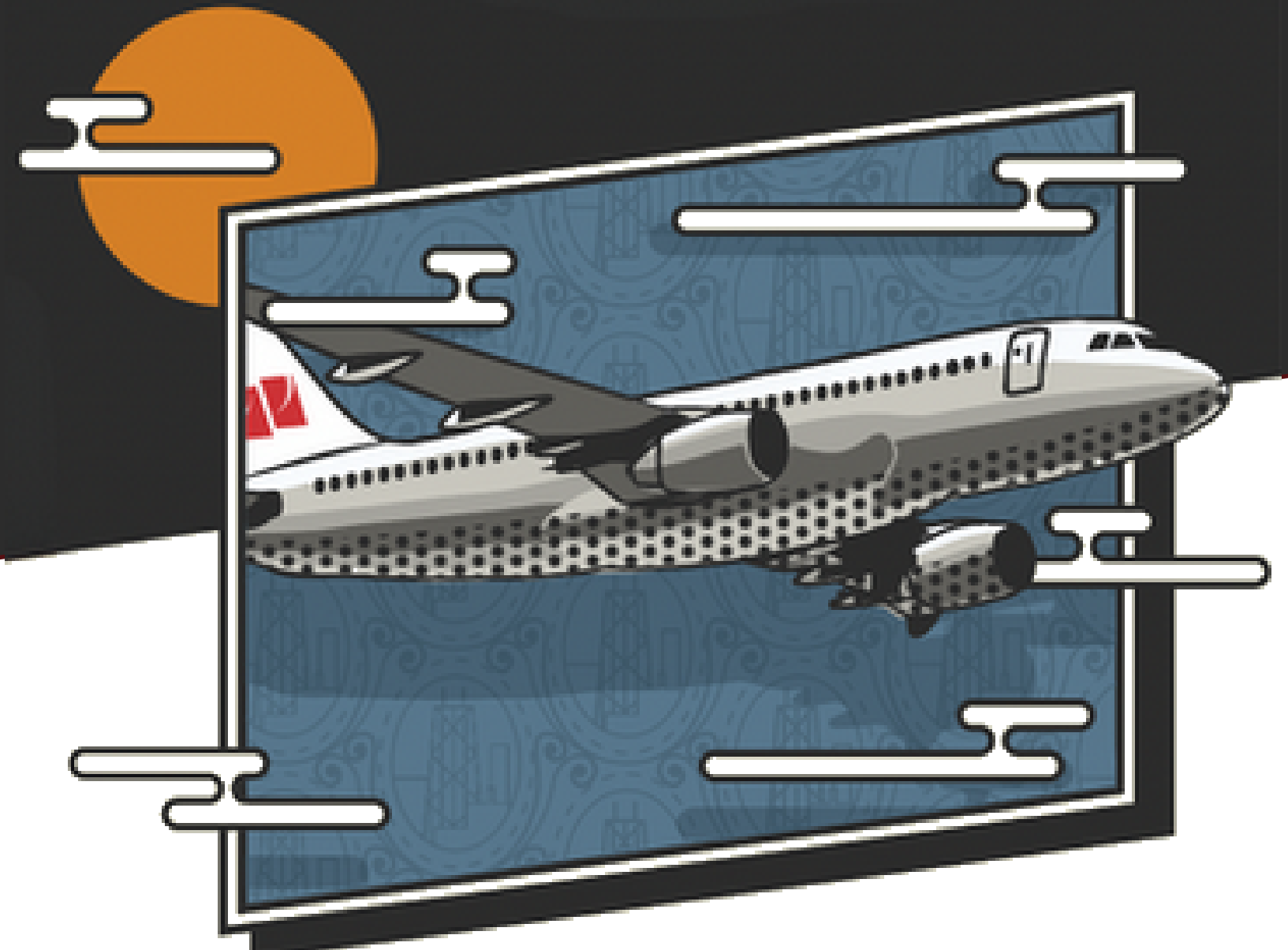
Broader changes in the law

- *Loper-Bright* and reduced deference to agency interpretation of statutes
 - ❖ ASNA
 - ❖ ANCA
 - ❖ NEPA
- Future of *Auer and Meade*





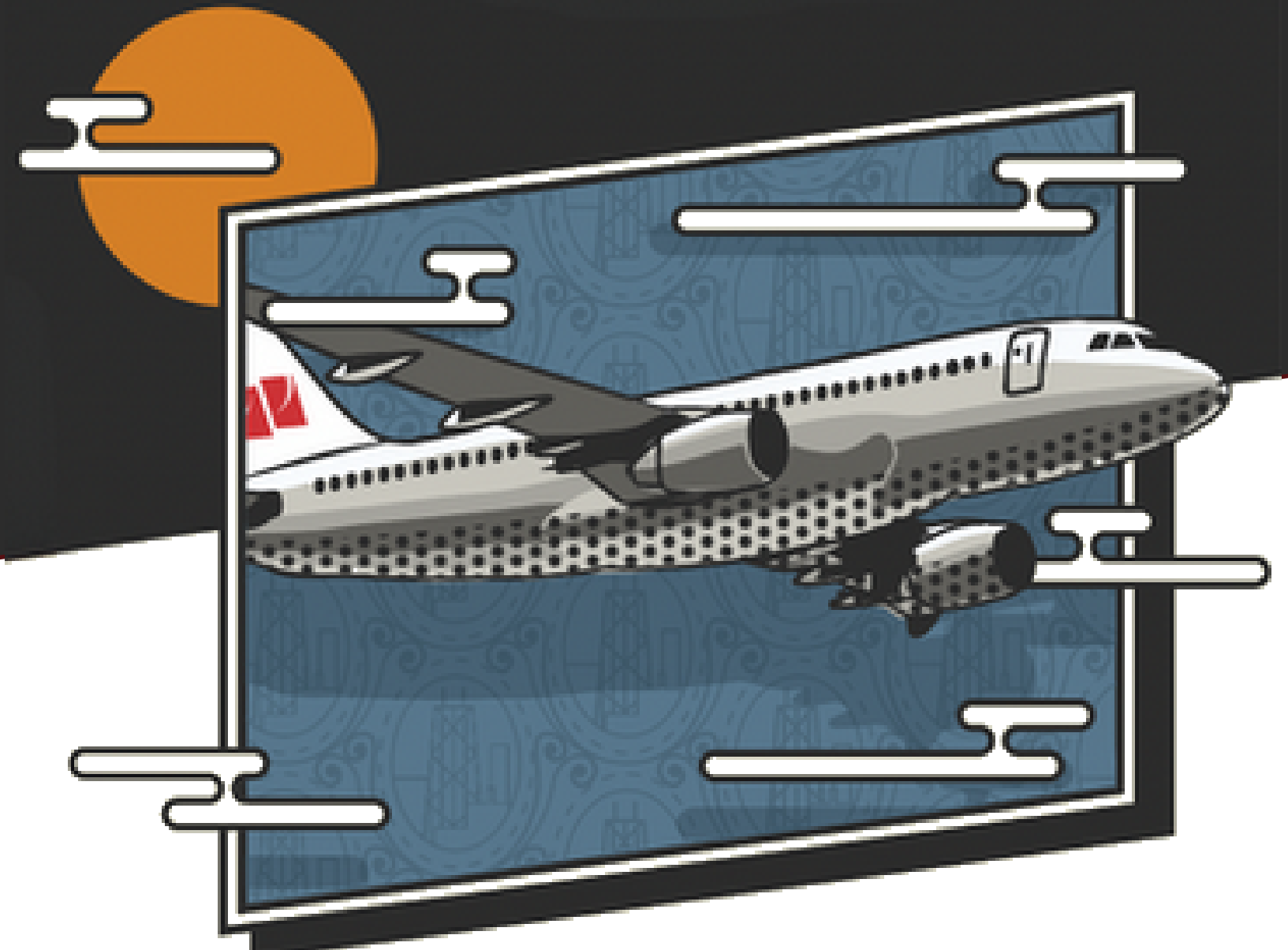
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QUESTIONS?



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THANK YOU!