

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 05-2184

Guy Heide; Michael A. Kosel;
Duane Taylor,

Petitioners,

v.

Marion C. Blakey, Administrator,
Federal Aviation Administration;
Glen Orcutt, Community Planner,
Minneapolis Airports District Office,
Federal Aviation Administration;

Respondents,

Metropolitan Airports Commission,

Intervenor on Appeal.

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Petition for Review of a
Decision of the FAA.

[UNPUBLISHED]

Submitted: October 6, 2006
Filed: October 11, 2006

Before MURPHY, BYE, and MELLOY, Circuit Judges.

PER CURIAM.

Pursuant to 49 U.S.C. § 46110, Guy Heide, Michael Kosel, and Duane Taylor (petitioners) petition for review of a decision of the Administrator of the Federal

Aviation Administration (FAA Administrator) determining that certain noise exposure maps comply with applicable federal requirements.

We conclude that the FAA Administrator’s decision is not final and thus is not a reviewable order within the meaning of section 46110. See, e.g., Village of Bensenville v. FAA, 457 F.3d 52, 68 (D.C. Cir. 2006) (order under § 46110 must “possess the quintessential feature of agency decisionmaking suitable for judicial review: finality”; to be final, agency action (1) must not be tentative or interlocutory, but represent consummation of decisionmaking process, and (2) must determine right or obligation or otherwise create some legal consequence); Gilmore v. Gonzales, 435 F.3d 1125, 1132-33 (9th Cir. 2006) (in defining “order” under § 46110, “finality is key”; agency decision must impose obligation, deny right, or fix some legal relationship; if order provides definitive statement of agency’s position, has direct and immediate effect on day-to-day business of party asserting wrongdoing, and envisions immediate compliance with its terms, order is sufficiently final to warrant § 46110 review), petition for cert. filed, 75 U.S.L.W. 3074 (US Aug. 4, 2006) (No. 06-211); Aerosource, Inc. v. Slater, 142 F.3d 572, 578 (3d Cir. 1998) (to be reviewable under § 46110, “order” need not be formal, but must be final and must impose obligation, deny right, or fix some legal relationship).

Accordingly, the petition for review is dismissed. Petitioners’ motion to supplement the record is denied as moot.