DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29797; FAA Order 1050.1E]

Environmental Impacts: Policies and Procedures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of adoption; notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) has revised its procedures for implementing the National Environmental Policy Act by replacing Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, with Order 1050.1E Environmental Impact: Policies and Procedures. The revisions include: consolidating the FAA categorical exclusions in the appendixes to Order 1050.1D into the body of the order (including those in Order 5050.4A); adding new and modified categorical exclusions; incorporating new procedures for preparing environmental documents; consolidating Order 1050.1D appendixes, which describe procedures for each program office, into the body of the order; and adding new appendixes, such as on third-party contracting. Revisions incorporated into Order 1050.1E are consistent with FAA efforts to streamline the NEPA process that were announced by the Administrator in January 2001. Order 1050.1E also includes an appendix covering the environmental stewardship and streamlining provisions in ''Vision 100—Century of Aviation Reauthorization Act.'' This notice also provides the public with information on how to access Order 1050.1E on the Web site of the FAA's Office of Environment and Energy.

DATES: Order 1050.1E was effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew McMillen, Environment, Energy, and Employee Safety Division (AEE–200), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–4018.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act (NEPA) and implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) establish a broad national policy to protect the quality of the human environment and provide policies and goals to ensure that environmental considerations and associated public concerns are given careful attention and appropriate weight in all decisions of the Federal Government. Section 102(2) of NEPA and 40 CFR 1505.1 require Federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ regulations.

The FAA's previous NEPA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, provided FAA's policy and procedures for complying with the requirements of: (a) The CEQ regulations for implementing the procedural provisions of NEPA; (b) Department of Transportation Order DOT 5610.1C, Procedures for Considering Environmental Impacts, and (c) other applicable environmental laws, regulations, and executive orders and policies. The FAA proposed to replace Order 1050.1D with Order 1050.1E and incorporate certain changes based on notice and request for comment published in the **Federal Register** (64 FR 55526, October 13, 1999). All comments received were considered in the issuance of the final Order 1050.1E.

This notice provides a synopsis of the changes adopted, including those additional changes resulting from comments received in response to the request for comments placed in the **Federal Register** (64 FR 55526, October 13, 1999). The Order is distributed throughout the FAA by electronic means only. The order will be initially located for viewing and downloading by all interested persons at *http://www.aee.faa.gov*. If the public does not have access to the internet, they may obtain a computer disk containing the order by contacting the Office of Environment & Energy, 800 Independence Avenue SW., Washington DC 20591. If the public is not able to use an electronic version, they may obtain a photocopy of the order, for a fee, by contacting the FAA's rulemaking docket at Federal Aviation Administration, Office of the Chief Council, Attn: Rules Docket (AGC–200)—Docket No. 29797, 800 Independence Avenue SW., Washington DC 20591.

Synopsis of the Changes: The FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, includes additions or changes to the previous version of the order that may be of interest to the public and other government agencies and organizations.

The revised Order 1050.1E:

a. Reorganizes to consolidate all FAA categorical exclusions, including new and modified categorical exclusions for all FAA programs, into chapter 3 while eliminating the separate appendices and their respective categorical exclusions for each program. Categorical exclusions are those types of Federal actions that meet the criteria contained in 40 CFR 1508.4 of the NEPA regulations promulgated by the Council on Environmental Quality. Categorical exclusions represent actions that, based on the FAA's past experience with similar actions, do not normally require an EA or EIS because they do not individually or cumulatively have a significant effect on the human environment.

b. Reorganizes to place the types of actions that normally require preparation of EA's and EIS's for all programs into Chapters 4 and 5, respectively. Appendix 6 (Airports) of Order 1050.1D (which references FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985) is now incorporated under paragraph 214 of this order. Except for the procedures for internal FAA coordination and review of environmental documents in FAA Order 5050.4A (paragraphs 63, 64, and 95), if there is a conflict between Order 1050.1E and supplemental program guidance, Order 1050.1E takes precedence.

c. Adds Tribes to the list of government agencies consulted in extraordinary circumstances determinations when actions are likely to be highly controversial on environmental grounds based on concerns raised by a Federal, State, or local government agency, Tribe, or by a substantial number of the persons affected by the action (see paragraph 304i); likely to violate Tribal water quality standards under the Clean Water Act and Safe Drinking Water Act (see paragraph 304h), or air quality standards established under the Clean Air Act Amendments of 1990 (see paragraph 304g); or likely to be inconsistent with any Tribal law relating to environmental aspects of the proposed action or Federal responsibilities toward Tribal trust resources. Includes new guidance on government-to-government consultation with Tribes, in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000 (65 FR 67249, November 9, 2000), and Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, dated April 29, 1994 (59 FR 22951, May 4, 1994) (see paragraph 213). Incorporates references to Tribal consultation into appendix A, section 11 on cultural resources, in accordance with regulations governing section 106 consultation under the National Historic Preservation Act (36 CFR part 800) and compliance with the Native American

Graves Protection and Repatriation Act (43 CFR part 10), the American Indian Religious Freedom Act of 1978 (Pub. L. 95–341), and E.O. 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996).

d. Provides guidance on intergovernmental review of agency actions that may affect State and local governments, in accordance with E.O. 12372, Intergovernmental Review of Federal programs (July 14, 1982), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities (see paragraph 213).

e. Deletes from the characteristics for extraordinary circumstances those actions that are likely to be highly controversial with respect to availability of adequate relocation housing.

f. Provides guidance for the option of documenting that a project qualifies for categorical exclusion (see paragraph 305).

g. Adds new categorical exclusions and revises existing categorical exclusions to accommodate actions that do not significantly affect the environment. The new and revised categorical exclusions are the result of the accumulated environmental experience of the FAA's actions subsequent to the original issuance of FAA's categorical exclusions between 1973 and 1986. The new categorical exclusions are: paragraphs 307c, 307e, 307f, 307h, 307p, 307u, 310c, 310d, 310u, 310w, 310z, 311c, 311d, 311e, 311g, 311k, 311m, 311n and 312b. Categorical exclusions that were substantively amended are: paragraphs 307i, 307k, 307m, 307o, 309a, 309d, 309e, 310a, 310b, 310h, 310i, 310k and 310p. Some of the amended categorical exclusions are formed by combining two or more categorical exclusions from Order 1050.1D. Applicable actions of the Associate Administrator for Commercial Space Transportation were added to the categorical exclusions under paragraphs 308b, 309c, 309d, 309g, 309h, 310h, 310l, 310q, 310t and 311n. Previous categorical exclusions from Order 1050.1D that were determined to be no longer relevant (outdated; redundant) were not carried forward into Order 1050.1E. The deleted categorical exclusions were (as identified in Order 1050.1D): Appendix 1, paragraphs 5i, 5o, and 5s; Appendix 3, paragraphs 4b and 4h; Appendix 4, paragraph 4e and 4m; Appendix 5, paragraphs 4a, 4b, 4c, 4e and 4f; and Appendix 7, paragraph 4b. Two previously-listed categorical exclusions, one in Order 1050.1D (Appendix 3, paragraph 4a) and the other in Order 5050.4A (paragraph 23b(9)), were determined to be ''advisory actions.'' These are removed from the list of categorical exclusions and are now properly identified as advisory actions in paragraph 301.

h. Provides formal procedures for adopting draft and final EA's prepared by other agencies (see paragraph 404d), as recommended by CEQ in its Memorandum: Guidance Regarding NEPA Regulations (48 FR 34263, July 28, 1983).

i. Provides a new optional procedure for preparing joint decision documents that meet the requirements of NEPA and the Federal Aviation Act of 1958, as amended (see paragraph 408).

j. Provides a new optional procedure for preparing scoping documents (see paragraph 505).

k. Provides a new optional procedure for publishing records of decisions (ROD's) in the **Federal Register** (see paragraph 512e).

l. Adds a requirement, pursuant to EPA filing guidance, to notify the EPA if the FAA adopts an EIS prepared by another agency (see paragraph 518h).

m. Adds a new appendix A, Analyses of Environmental Impact Categories. Appendix A contains an overview of procedures for implementing other applicable environmental laws, regulations, and executive orders in the course of NEPA compliance. Appendix A incorporates and updates Attachment 2 of Change 4 to Order 1050.1D, and amends each impact category to include a significant threshold paragraph where thresholds have been established.

n. Adds a new subject, ''Supplemental Noise Guidance.'' to the Noise section of Appendix A (see section 14). Although the yearly day/night average sound level (DNL) is FAA's metric for determining significant noise impacts for NEPA purposes, supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the yearly day/night average sound level (DNL) contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

o. Adds a reference to the use of demographic information of the geographic area of potentially significant impacts for purposes of anticipating and responding to public concerns about environmental justice and children in accordance with applicable Executive Orders, directives, and guidance issued by the CEQ and EPA. (see section 16 of Appendix A)

p. Provides a new procedure for integrating Clean Water Act section 404 permitting requirements and NEPA (see section 18, Appendix A, Analysis of Environmental Impact Categories).

q. Adds a new Appendix B, FAA Guidance on Third-Party Contracting, with a brief cross-reference in paragraph 204d. This appendix provides guidance on the use of third-party contractors in the preparation of NEPA documents consistent with 40 CFR 1506.5(c). Third-party contracting refers to the preparation of an EIS by a contractor selected by the FAA and under contract to, and paid for by, an applicant.

r. Adds a new Appendix D that describes Environmental Stewardship and Streamlining pursuant to provisions in ''Vision100—Century of Aviation Reauthorization Act'' that give review priority to certain projects, require the establishment and management of review timelines, improve and expedite interagency coordination, reduce undue delays, emphasize accountability, and otherwise assist in facilitating environmental reviews.

s. Adds guidance that gives special consideration to the evaluation of the significance of noise impacts on noise-sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties, and states that Part 150 land use guidelines and the DNL 65 dB threshold of significance for noise do not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

The new and amended categorical exclusions, and paragraph 211 on reducing paperwork and paragraph 212 on reducing delays are consistent with the FAA's initiative to streamline the NEPA process that was announced by the Administrator in January 2001. The new appendix on environmental stewardship and streamlining describes provisions enacted into law in December 2003 and provides information on FAA responsibilities under these provisions. The provisions

do not change the requirements in Order 1050.1E or FAA responsibilities for complying with NEPA and other environmental laws, as described in the Order.

Disposition of Comments

Additional changes and clarifications were added to the final order in response to comments received as a result of the **Federal Register** notice and are discussed in the forthcoming paragraphs describing the disposition of comments. Comments were received from three primary sources: (1) Agencies of the Federal government and State and local governments; (2) organizations and special interest groups; and (3) individual members of the public. The term ''comment'' used in this notice refers to each individual issue raised by a commenter; numerous comments may have been identified within the correspondence forwarded to the FAA docket by a commenter. Although the notice requested comments only on the proposed changes to the FAA's NEPA procedures, the FAA determined that the public interest was better served by considering all comments submitted. Also discussed are any substantive changes to the order resulting from deliberative discussions with the Environmental Protection Agency, the Office of the Secretary of Transportation, the Council on Environmental Quality, and internal elements of the FAA.

Comments received can be classified into two categories: (1) Those comments that broadly cover a given chapter (chapter-wide), appendix (appendix-wide), or the order as a whole; and (2) those comments that specifically relate to a given paragraph or component of a paragraph. Also, certain issues were identified during the commenting process that are of substantial interest to the commenters. Such issues (issues of special interest) are treated with a more extensive discussion in this preamble commensurate with the level of interest expressed in the public comments. The order in which comments will be discussed is as follows: (1) Issues of special interest; (2) general subject matter; and (3) for each chapter and appendix in succession, first chapter- or appendix-wide comments followed by comments relating to individual paragraphs. As a consequence of changes made to the order in response to comments, some of the paragraph and subparagraph numbering have changed. References to specific paragraphs in this preamble are made to the revised paragraph and subparagraph numbering of the final Order.

Issues of Special Interest

There were a number of general comments regarding the applicability of DNL 65 dB, both as the preferred noise metric and as the sound level generally identified as the ''significant'' threshold level of aviation noise. The FAA's responses are addressed in the topic areas DNL Metric; Relationship between DNL and Annoyance (Schultz Curve); and 65 dB Level.

DNL Metric: The Aviation Safety and Noise Abatement Act of 1979 directed FAA to establish by regulation a single system for measuring noise exposure at airports and surrounding areas which would provide a highly reliable relationship between projected noise exposure and surveyed reactions of people to noise. The FAA adopted DNL. The EPA Guidelines for Noise Impact Analysis (U.S. Environmental Protection Agency 1982) also used DNL as the primary measure of general audible noise. All Federal agencies have now adopted DNL as the metric for airport noise analysis in NEPA (EIS/EA) documents. DNL takes into account the magnitude of the sound levels of all individual events that occur during the 24-hour period, the number of events, and an increased sensitivity to noise during typical sleeping hours. DNL is an average in that it accumulates all the noise exposure over a 24-hour period and divides the total by the number of seconds in a day. As described in the FICON Technical Report, the logarithmic nature of the decibel (dB) unit on which DNL is based causes sound levels of the loudest events to control the 24-hour average. The FICON technical subgroup focused extensively on the question of the applicability of the DNL metric (see Federal Interagency Committee on Noise (FICON), Federal Agency Review of Selected Airport Noise Analysis Issues, August 1992. After reviewing all noise exposure metrics, the FICON technical subgroup concluded that no other metrics are of sufficient scientific standing to replace DNL. The available evidence indicates that DNL continues to be the superior metric to account for variations in the noise environment, including such factors as numbers of flights, loudness of individual aircraft, and percentage of night flights.

Relationship between DNL and Annoyance (Schultz Curve): The Schultz (1978) curve relating DNL to the percent of people highly annoyed (see Schultz, T.J. 1978, Synthesis of Social Surveys on Noise Annoyance, Journal of the Acoustical Society of America 64(2): 377–405.) is generally accepted as a valid criterion for noise impact and has been revalidated by subsequent analyses over the years (see Fidell, S., D. Barber, Updating a Dosage-Effect Relationship for the Prevalence of Annoyance Due to General Transportation Noise, Journal of the Acoustical Society of America, 89, January 1991, pp. 221–233; also see Finegold, L.S., C.S. Harris, and H.E. von Gierke, 1992, Applied Acoustical Report: Criteria for Assessment of Noise Impacts on People, Journal of the Acoustical Society of America, June 1992; also see Finegold, L.S., C.S. Harris, and H.E. von Gierke, 1994, Community Annoyance and Sleep Disturbance: Updated Criteria for Assessing the Impacts of General Transportation Noise on People, Noise Control Engineering Journal, Volume 42, Number 1, January–February 1994, pp. 25–30). In this regard, the Schultz dosage-effect relationship provides the best tool available to predict noise-induced chronic annoyance. As stated in the 1992 FICON report, ''The relationship is an invaluable aid in assessing community response as it relates the response to increases in both sound intensity and frequency of occurrence. Although the predicted annoyance, in terms of absolute levels, may vary among different communities, the Schultz curve can reliably indicate changes in the level of annoyance for defined ranges of sound exposure for any given community.''

65 dB Level: Federal agencies have adopted certain guidelines for compatible land uses and environmental sound levels. Land use is normally determined by property zoning, such as residential, industrial, or commercial. Noise levels that are unacceptable for homes may be quite acceptable for stores or factories. The FAA has issued these guidelines as part of its Airport Noise Compatibility Program, found in Part 150 of the Federal Aviation Regulations. In general, most land uses are considered to be compatible with DNL's that do not exceed 65 dB. Part 150 notes that responsibility for determining the ''acceptable'' and permissive land uses based on needs and values and the relationship between specific properties and specific noise contours rests with the local authorities. For properties protected under section 4(f) of the Department of Transportation Act, the FAA recognizes that in certain circumstances the Part 150 guidelines may not be sufficient, and some instances, are not sufficient, to determine noise compatibility or the threshold of significance (see sections 4.3, 6.2, and 14.3 of Appendix A of Order 1050.1E). A DNL of 65 dB is

generally identified as the threshold level of aviation noise, and other sources of community noise, which are ''significant''.

Some criticism of DNL stems from beliefs that the levels identified with land-use compatibility are too high. Any compatibility guideline, such as a DNL of 65 dB, must represent a balance between that level which is most desirable to protect communities and that which can be achieved with cost-effective mitigation measures and available technology. Local communities may choose to adopt guidelines based on locally determined needs and values under which residential land uses are non-compatible with noise at levels below a DNL of 65 dB.

In addition, the Federal Interagency Committee on Aviation Noise (FICAN) continues to support the use of DNL 65 dB as the level of aircraft noise that indicates a threshold incompatibility with residential land use as stated in their most current Annual Report, dated October 1998.

Definition of Significant: Several comments were received requesting that a clear definition of the term ''significant'' as it pertains to aircraft noise exposure be included in FAA Order 1050.1E. The FAA's response: General guidelines for noise compatibility identify day-night average sound levels between 55 and 65 dB as ''moderate exposure'' and as generally acceptable for residential use. Above a DNL of 65 dB, these guidelines identify the noise impact as ''significant''. For the purpose of defining a significant impact threshold for assessing the impact of a proposed FAA action, a significant noise impact would occur if analysis shows that the proposed action will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure when compared to the no action alternative for the same timeframe. For example, an increase from 63.5 dB to 65 dB is considered a significant impact. This Order provides additional guidance for special consideration where the land use compatibility guidelines under 14 CFR part 150 and the DNL 65 dB threshold either may not be or are not relevant. See sections 4, 6, and 14 of appendix A of Order 1050.1E.

A-Weighting: There were a number of comments that objected to the use of A-weighting. The FAA's response: When measuring community response to noise, it is common to adjust the frequency content of the measured sound to correspond to the frequency sensitivity of the human ear. This adjustment is called A-weighting (American National Standards Institute, 1988). Sound levels that have been so adjusted are referred to as A-weighted sound levels. The A-weighted sound level is used extensively in the U.S. for measuring community and transportation noises. In 14 CFR part 150 the FAA adopted the A-weighted sound level as the single system of measuring noise that has a highly reliable relationship between projected noise impacts and surveyed reactions of individuals to noise to apply uniformly in measuring noise at airports and the surrounding area pursuant to the Aviation Safety and Noise Abatement Act of 1979, 49 U.S.C. § 47501 *et seq.* Note: A-weighting emphasizes sound components in the frequency range where most speech information resides, and thus yields higher readings (A-weighted levels) for sound in the 2,000 to 6,000 Hz range, but considerably lower readings for low-frequency noise, than does the overall sound pressure level. The normal human ear can hear frequencies from about 20 Hz to about 15,000 or 20,000 Hz. It is most sensitive to sounds in the 1,000 to 4,000 Hz range.

Area Equivalent Method (AEM): There were a number of general comments that suggested AEM 3.0 is outdated. The FAA's response: The FAA concurs. However, the FAA has updated AEM to Version 6.0c subsequent to the October 13, 1999 **Federal Register** Notice and will continue to do so with each future update of the Integrated Noise Model (INM). The Office of Environment and Energy (AEE) has released seven versions of the Area Equivalent Method (AEM).

(1) February 1984, which required VISICALC software package and an Apple IIe personal computer.

(2) July 1984, which required the LOTUS 1–2–3 software and an IBM compatible personal computer.

(3) November 1989, Version 2, a LOTUS 1–2–3 spreadsheet converted into an executable BASIC program that functioned similar to a LOTUS spreadsheet.

(4) September 1996, Version 3, a very early DOS-based C++ program utilizing text graphics windows.

(5) September 2000, Version 5.2a, a Microsoft EXCEL 97 worksheet.

(6) February 2001, Version 6.0b, a Microsoft EXCEL 97/2000 worksheet.

(7) September 2001, Version 6.0c, a Microsoft EXCEL 97/2000 worksheet.

The AEM algorithm has not changed since 1984. Updates to AEM involve the software used and/or expansion of the aircraft type database. AEM Version 6.0c's database was produced using INM 6.0c, the current version of that model. Note: The AEM is a screening procedure used to simplify the assessment step in determining the need for further analysis with the Integrated Noise Model (INM) as part of Environmental Assessments and Impact Statements (EA/EIS) and Federal Aviation Regulations Part 150 studies. AEM is a mathematical procedure that provides an estimated noise contour area of a specific airport given the types of aircraft and number of operations for each aircraft. The noise contour area is a measure of the size of the landmass enclosed within a level of noise as produced by a given set of aircraft operations. The AEM produces contour area (in square miles) for the DNL 65 dB noise level and any other whole DNL value between 45 and 90 dB. The AEM is used to develop insights into potential increase or decrease of noise resulting from a change in aircraft operations. Further information on, and the current status of, AEM and other environmental models may be obtained by visiting the Web site of the Office of Environment and Energy at *http://www.aee.faa.gov*.

Heliport Noise Model (HNM): There were a number of general comments that suggested HNM 2.2 is outdated. The FAA's response: The Heliport Noise Model (HNM) Version 2.2, released March 1994, is the best tool available to analyze heliport noise impacts; and it is part of FAA's ongoing commitment to help resolve aircraft noise issues. HNM is a computer program used for determining the impact of helicopter noise in the vicinity of terminal operations. HNM Version 2.2 is based upon FAA's Integrated Noise Model (INM) Version 4.0, a similar computer program for assessing the impact of fixed-wing aircraft noise. The HNM differs from the INM in its ability to accommodate the greater complexity of helicopter flight activities compared to the activities of fixed-wing aircraft. An updated version of HNM integrated with INM is currently under development and is expected to be released with INM 7.0.

Corporate Jets: There were a number of general comments concerning the exclusion of corporate jets (<75,000 lbs.) from Stage 3 rules. The FAA's response: The newest set of standards, known as Stage 3 standards, apply to all aircraft weighing more than 75,000 pounds and to newly manufactured aircraft weighing 75,000 pounds or less. The Airport Noise and Capacity Act of 1990 mandated the retirement of heavier aircraft not meeting Stage 3 standards, but not aircraft weighing 75,000 pounds or less. These lighter aircraft also did

not have to be retired under earlier noise standards because the FAA concluded that it was questionable whether the technology existed to modify those aircraft in a cost-effective manner. (U.S. General Accounting Office, Report to Congressional Requesters, Aviation and the Environment: FAA's Role in Major Airport Noise Programs, April 2000, p. 6)

14 CFR Part 150: There were a number of general comments requesting that all references to 14 CFR part 150 be deleted, especially ''Table 1, Land Use Compatibility With Yearly Day-Night Average Sound Levels,'' presented in section 4 of appendix A. The FAA's response: The FAA does not concur with the commenters' recommendations. The table in question continues to provide a standard reference for land uses compatible with various levels of airport noise. As such, the table continues to play a vital role in assessing the compatibility of aircraft noise. However, the FAA recognizes that the Part 150 guidelines may not be sufficient in some instances, and are not sufficient in other instances, to determine noise compatibility or the threshold of significance (see sections 4.3, 6.2, and 14.3 of Appendix A of Order 1050.1E. Federal Aviation Regulation, 14 CFR part 150, Airport Noise Compatibility Planning, is the primary Federal regulation guiding and controlling planning for aviation noise compatibility on and around airports. Part 150 was issued as an interim regulation (46 FR 8316; January 19, 1981) under the authority of the Aviation Safety and Noise Abatement Act of 1979 [49 U.S.C. 7501 *et seq.*] (ASNA Act) and 49 U.S.C. § 44715. Implementation of noise compatibility planning under the ASNA Act was delegated to the FAA. Part 150 established procedures, standards, and methodologies to be used by airport operators for the preparation of Airport Noise Exposure Maps (NEM's) and Airport Noise Compatibility Programs (NCP's) which they may submit to the FAA under Part 150 and the ASNA Act. The final rule was issued on January 18, 1985 (49 FR 49260) and, on March 16, 1988, was amended to include freestanding heliports (53 FR 8722).

The FAA believes that the Part 150 process is a balanced approach for mitigating the noise impacts of airports upon their neighbors while protecting or increasing both airport access and capacity, as well as maintaining the efficiency of the national aviation system. Part 150 provides for the following:

(1) Establishes standard noise methodologies and units.

(2) Establishes the Integrated Noise Model (INM) as the standard noise modeling methodology.

(3) Identifies the land uses that normally are compatible or incompatible with various levels of airport noise.

(4) Provides voluntary development of NEM's and NCP's by airport operators.

(5) Provides for review of NEM's to insure compliance with the Part 150 regulations.

(6) Provides for review and approval or disapproval of Part 150 NCP's submitted to the FAA by airport operators.

(7) Establishes procedures and criteria for making projects eligible for funding under the Airport Improvement Program.

The regulations contained in Part 150 are voluntary and airport operators are not required to participate. However, an approved Part 150 NCP is the primary vehicle for gaining approval of applications for Federal grants for noise compatibility projects.

A standard table of land uses normally compatible (or incompatible) with various exposures of individuals to airport-related noise is essential to assure uniform treatment of both airport operations and noise-sensitive land uses or activities. This is the only noise and land use compatibility table currently in the Code of Federal Regulations (14 CFR part 150).'' (Report to Congress: Part 150 Airport Noise Compatibility Planning, November 1989)

3000 Foot Categorical Exclusion: The comments received indicate considerable public interest in one of the categorical exclusions provided in Chapter 3. The categorical exclusion at issue is identified under paragraph 311j, which provides in part; ''Establishment of new or revised air traffic control procedures conducted at 3000 feet or more above ground level, * * *.'' The two environmental concerns identified in the public comments were aircraft noise and air quality (aircraft emissions). Given the level of public interest, the FAA determined it was in the public interest to re-verify the technical basis for the categorical exclusion and is using this opportunity to notify the public of the re-verification results below:

Noise: A technical study was conducted based on the Integrated Noise Model (INM) Version 6.0a, to demonstrate the noise exposure effects of aircraft flights at or above 3,000 ft AGL, and specifically to demonstrate the degree to which these actions could contribute to significant impact of DNL 65 dBA.

The study focused on the same types of parameters that can be input into the Air Traffic Noise Screening Model (ATNS) Version 2.0 including: (1) The number of annual operations; (2) the type of operations (arrival/departure); and (3) the percent daytime/nighttime operations.

The technical study utilized INM 6.0a (the most current technology in noise modeling) to identify the number of aircraft operations required to produce DNL 65 dBA under various noise exposure conditions. To conduct the study the following steps were followed:

(Step 1). Selection of four aircraft to represent different categories of commercial aircraft. The following aircraft were selected to provide conservative estimates (estimates that would tend to over-protect, rather than under-protect people from noise impacts): (a) Boeing B747–400, for wide-body aircraft; (b) Boeing B757–200, for large aircraft; (c) Fokker F100, for medium size jets; and (d) Embraer 145, for small jets, regional jets, and props.

(Step 2). Selection of aircraft climb/power settings and speeds to reflect full power conditions which is the same assumption used to build the tables of the ATNS.

(Step 3). Conduct INM 6.0a runs for level fly-over, using the selected climb/power settings and speeds for each aircraft at the corresponding altitudes of 3,000, 3,500, 4,000, 4,500, and 5,000 feet.

(Step 4). Development of an Excel spreadsheet (CATEX Tool) that predicts the number of flight operations necessary to increase to DNL 65 dBA.

(Step 5). Analysis of the year 2000 Official Airline Guide (OAG) data for twelve U.S. airports (representative of large, medium and small operational capacities) and develop representative (composite) aircraft fleet mix and percent nighttime operations.

The study addressed the number of operations required to create a significant impact (*i.e.* creation or enlargement of a 65 dB DNL noise contour or for areas already within the 65 dB DNL noise contour, a 1.5 decibel increase in noise). Two scenarios were analyzed for: (1) Areas currently exposed to aviation noise (Existing Noise); and (2) areas not currently exposed to aviation noise (No Preexisting Noise). The results are shown in Table 1 for the composite fleet.

TABLE 1.—"NO PREEXISTING NOISE" VERSUS "EXISTING NOISE" FOR THE COMPOSITE FLEET[1]

Airport noise exposure environment	Night operations (percent)	Day operations (percent)	Operations @ 3000 ft. CATEX tool
No Preexisting Noise to DNL 65 dBA	16	84	900
Existing Noise (DNL 63.5) to DNL 65 dBA	16	84	263

[1] The composite fleet is the average of twelve airport fleets and night/day operations.

The final column, ''Operations @ 3000 ft. CATEX Tool'', represents the number of new operations, flying over the same point, at 3,000 feet AGL during a single day which would produce a significant impact by either creating a DNL 65 dBA noise contour where previously there was no aviation noise, or for areas already experiencing DNL 63.5 dBA from aviation noise, a 1.5 decibel increase in noise. In other words, modifications to air traffic procedures at 3,000 feet AGL would have to route 900 new operations over noise sensitive areas not currently exposed to aviation noise or 263 new operations over noise sensitive areas currently exposed to aviation noise in a single day.

In the FAA's experience, the likelihood that changes to air traffic procedure would direct numbers of operations exceeding this level over a single noise sensitive area around any airport is remote. Therefore, changes to air traffic procedures at or above 3,000 feet AGL in normal circumstances (*i.e.* absent extraordinary circumstances) qualifies for categorical exclusion in accordance with CEQ regulations.

A copy of the paper ''Order 1050.1E 3000 ft. AGL Categorical Exclusion Validation Study'', which fully describes the re-validation effort, has been placed in the docket. A copy of the report will be available from FAA's Office of Environment and Energy Web site at *http://www.aee.faa.gov* for 120 days following publication of this notice in the **Federal Register**.

Air Quality: For this categorical exclusion, the effects on local air quality resulting from aircraft operating at or above 3000 feet above ground level (AGL) have been studied to a limited extent (FAA Report: FAA–AEE–00–01, ''Consideration of Air Quality Impacts by Airplane Operations At or Above 3000 Feet AGL''). It has been concluded that aircraft operating at such altitudes, generally termed overflights, do not impact local air quality, even with worst case assumptions.

Local air quality impacts are defined by the National Ambient Air Quality Standards (NAAQS) which include exceedance levels for concentrations of six pollutants. Potential impacts on local air quality are evaluated by predicting local concentrations and reporting total mass emitted for a particular pollutant. When determining local air quality impacts the location of the source is of primary importance. For aircraft overflights, the aircraft are at considerable altitude.

At most major U.S. airports, safety dictates that overflights be at least 7000 feet above field elevation. However, for U.S. airspace in general, the minimum overflight altitude may be as low as 3000 feet, and, as such, is the figure used in this analysis. Of most importance is the relationship between the minimum overflight altitude and the mixing height, defined as the vertical region of the atmosphere where pollutant mixing occurs. The EPA default value for mixing height is 3000 feet, inasmuch as that value is close to the annual average mixing height in the contiguous United States. Above this height, pollutants that are released generally do not mix with ground level emissions and do not have an effect on ground level concentrations in the local area.

It can be demonstrated by dispersion modeling that by the time aircraft exhaust gases released above 3000 feet mix with the ambient air and reach the ground, the increase in ground level concentration is negligible, even for very large commercial jet aircraft. This occurs even if the mixing height is greater than 3000 feet. As for local air quality impacts when the aircraft are at 3000 feet and the mixing height is at a greater altitude, the effect on ground level concentration for the NAAQS criteria pollutants is so miniscule as to be negligible.

Based on the dearth of scientifically verifiable data on the local air quality impacts resulting from air emissions at altitudes at or above 3000 feet AGL, exploratory studies in this area continue. However, based on the current state of scientific understanding and EPA guidance on local air quality issues, a categorical exclusion is the appropriate procedural measure for this specified set of aircraft operations. A copy of the report FAA–AEE–00–01, ''Consideration of Air Quality Impacts by Airplane Operations At or Above 3000 Feet AGL'', which describes the re-validation effort, has been placed in the docket. A copy of the report will be available from FAA's Office of Environment and Energy Web site at *http://www.aee.faa.gov* for 120 days following publication of this notice in the **Federal Register**.

Comments on General Subject Matter

Presentation of Guidance in Order 1050.1E. Commenters from two Federal agencies noted that the Order contains guidance that is not appropriate in an order. They recommend that the order contain an outline of the CEQ regulations and the guidance put in a reference manual. FAA's response: FAA has determined that due to the need to update its NEPA procedures to aid users, the agency will not change the format for Order 1050.1E, but will consider changing the format for subsequent versions.

Health Effects: General. Several commenters expressed the view that aviation noise and aviation effects in general cause a variety of human ailments such as stress, aggravation, sleep deprivation, changes to personality, loss of technical abilities, changes in character, and mental and emotional harm. The same commenters also expressed concern over physical effects of aviation such as vibration and traffic congestion. FAA's response: The physical effects of aviation on the environment are addressed in Order 1050.1E. Even if a given action is otherwise categorically excluded from review under NEPA, extraordinary circumstances, such as increased traffic congestion, may be sufficient to trigger the preparation of an EA, and if significant environmental impacts were identified that could not be mitigated, possibly an EIS. Although it has yet to be scientifically demonstrated that aircraft noise, as typically experienced in communities surrounding airports, has a causal relationship with human physical and psychological ailments as described by the commenters, the FAA and other Federal agencies, including the EPA, through their participation in the Federal Interagency Committee On Aviation Noise (FICAN), continue to promote and monitor research in the field of aviation noise effects on the

human and ecological environment. See *http://www.fican.org* for further information on FICAN activities. Federal and state environmental regulations, coupled with the environmental review procedures mandated under NEPA, provide a means to assess and protect human health and welfare and the environment.

Health: Air Quality and Emissions. Several commenters expressed their concerns for the health impacts on the residents living near airports from toxic (air) emissions from the operation of aircraft. They believe that data from environmental studies conducted near airports show increased incidence of cancer and heart and respiratory diseases. FAA's response: The FAA has reviewed the studies cited by the commenters. Some specific studies of the health effects of aviation emissions have been conducted in Chicago. In one of the analytical reports, the southeast and southwest sides of Chicago were studied for cancer risk from air pollution. The southwest Chicago air toxics study explicitly included estimated impacts from Midway Airport. In southwest Chicago, mobile sources (including road vehicles, non-road engines, and aircraft engines) were estimated to contribute about 25 percent of the air toxic emissions. The risks of cancer from air toxics in southwest Chicago were estimated at approximately 2 in 10,000. This risk estimate is typical, consistent with studies of other urban areas, and falls well within the range of from 1 in 100,000 to 1 in 10,000 which was determined in other EPA studies to be a rough estimate of the combined health risks due to all sources of pollution in urban areas.

In an analytical report (KM Chng Environmental Inc., ''Findings Regarding Aircraft Emissions O'Hare International Airport and Surrounding Communities,'' KMC Report No. 991101; December 1999), it was again concluded that sources other than aircraft using O'Hare International Airport (O'Hare) emit the vast majority of the air pollutants of concern near the airport and that, in fact, emissions from aircraft using O'Hare were lower in 1998 than reported by the Illinois Environmental Protection Agency for 1990. It was stated that the study's findings indicate that aircraft using O'Hare play only a very minor role in regional ozone formation and contributions to air toxics near O'Hare.

In addition, the FAA has evaluated air toxics at Seattle-Tacoma International Airport (Sea-Tac) at the special request of local citizens groups. These studies indicated that automobile exhaust emissions appeared to be the primary source of air toxics within the region. (Sea-Tac Airport Master Plan Update Final EIS.) Such conclusions seem to be consistent with those in the EPA studies.

However, airports are by no means being overlooked or unmitigated as important sources of air emissions. When an airport owner proposes significant airport expansion involving Federal approval or funding, the FAA is responsible for evaluating the impact on national air quality standards. If the airport project is located in a nonattainment area, the FAA is required to determine that the type of emissions for which the area is in nonattainment and which are caused by the project would conform with the purposes of the applicable EPA State Implementation Plan. If *de minimis* levels are exceeded, the FAA must complete an air quality analysis for a determination of conformity, which is subject to public review and comment. In addition, effective control measures are currently available, particularly to reduce mobile source emissions associated with airport operations.

Airborne Emissions of Toilet Waste. A commenter believes that an example of the hazards caused by aircraft toxic emissions comes from the National Transportation Safety Board, which has determined that toilet valves on 727's and other jets leak. Descending aircraft routinely leak raw, untreated toilet waste over communities. FAA's response: The FAA strongly disagrees with the commenter's assertion that aircraft routinely leak toilet waste over communities. A leaking external liquid waste valve is a serious safety hazard to the operation of an aircraft. When leakage occurs, the liquid freezes into a block of ice on the exterior of the aircraft (the ''blue ice'' as popularized in the media). When the ice eventually separates from the aircraft in flight, the ice poses a hazard to turbojet engines mounted at the rear of the aircraft. In one instance, the ingestion of such a block of ice destroyed an engine of a 727 in flight, causing the engine to separate from the aircraft. Where the FAA has determined that the design of waste-handling components of a particular model of aircraft are not sufficiently robust to preclude incidents of leakage, the FAA has issued Airworthiness Directives to immediately force the operators of that model of aircraft to re-design the components in question.

Streamlining 1050.1E Procedures. One commenter believes that the currently proposed new and modified CATEX's, and the new procedures for preparing environmental documents will facilitate the approval of aviation-related programs and petitions by airport operator/user petitions, and it will further increase the burden imposed on the communities surrounding the airports. The commenter believes this is not an equitable proposal, therefore, it needs to be rethought, amended to achieve a fair balance, and then resubmitted. While not opposed to the general reduction of bureaucratic red tape, the commenter believes that such streamlining is warranted only for cases that have withstood the test of time, have reached an indisputable maturity level, and enjoy a broad based acceptance and support. Some of the current FAA procedures and standards associated with Aviation Noise Exposure have been and continue to be challenged as outdated or deficient, and they are at best controversial. Under the circumstances, the commenter believes it is premature to consider the order changes, some of which are based on currently disputed premises. Prior to contemplating implementation of the changes, the commenter believes that the FAA must define and establish a number of measures that automatically safeguard communities near airports, as much as facilitate the approval (through CATEX's) of petitions by airport operators and users. FAA's response: The new and modified CATEX's do not lower environmental protection requirements. Consistent with CEQ regulations, these CATEX's have been determined normally not to result in significant impacts. Safeguards have been built into the categorical exclusion list through the application of extraordinary circumstances (see paragraph 304).

Storm Water Runoff Effects. According to one commenter, the damage to the environment from airports has been so severe that several groups (among them the NRDC and the U.S. Humane Society) filed legal actions against Chicago's O'Hare and Baltimore Washington airports under storm water laws for polluting waterways with toxic chemicals which caused massive fish kills, among other effects. It is probable that similar conditions exist at other airports. For example, San Francisco International Airport is under a mandate to clean up its toxic, solvent-polluted soils under a storm water law. The commenter believes that further airport expansion without strict environmental review of toxic emissions, water and ground impacts, really sanctions violence against innocent citizens in favor of highly profitable airline

operations. FAA's response: The FAA and airport proprietors must comply with a variety of environmental laws and regulations that are aimed at protecting the environment from the effects of releases of pollutants. In the case of storm water, the principal means for protecting the environment is through the use of National Pollutant Discharge Elimination System (NPDES) permits. The NPDES regulatory program (40 CFR part 122) is administered pursuant to section 318, 402, and 405 of the Clean Water Act (33 U.S.C. 1251 *et seq.*). Runoff from airports, including runoff from deicing operations, is specifically covered under the NPDES program. Pollutant limits established for each permit ensure that applicable water quality standards of the receiving waters will not be exceeded. NPDES permits issued to FAA facility and airport operators (*e.g.*, new or modified permits associated with expansion projects) would require discharges to be monitored and reported to demonstrate permit compliance. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action (civil and criminal penalties); for permit termination, revocation and re-issuance, or modification; or denial of a permit renewal application. The enforcement of NPDES permits ensures that pollution of the environment from storm water runoff is not sanctioned.

Air Quality Conformity Requirements. A commenter (ATA) remains concerned that the air quality conformity requirements are unduly rigorous as applied to airport projects and have submitted joint comments to EPA calling for revisions and clarifications. They are encouraged by FAA's statement in Appendix A that it will publish a list of actions presumed to conform sometime in the future. ATA urges the FAA to develop this list as expeditiously as possible and would be glad to work with the FAA in this regard. FAA's response: Order 1050.1E reflects current air quality conformity requirements. FAA is continuing to pursue progress on a ''presumed to conform'' list and other suggested changes to general conformity requirements.

FAA Regulatory Authority. A commenter believes the revised order may not adequately emphasize the role of the FAA as the principal federal agency regulating commercial aviation in this country. Congress has vested responsibility for regulating airline safety and operations in the FAA. As such, its policies for assessing the environmental impacts of its actions directly affect airports and the commercial carriers that serve them. Consistent with this, the commenter believes that the revised order should fully explain and appropriately emphasize the Congressional statutory enactments and associated body of federal case law that have established a plenary federal jurisdiction over matters relating to aviation, and in particular, aircraft and airport operations, airport development, aircraft engine emissions, noise regulation and safety. This regulatory predicate is unique to the airline industry and, as a critical aspect of the regulatory regime governing aviation-related federal actions, it should be recognized and clearly explained in the revised order. In particular, such a discussion should emphasize the relevant aviation-related statutes and specific regulatory requirements for matters that may affect aircraft and airport operations and safety. As a source of information for state and local governments, and individuals, and as guidance for FAA consultants preparing EA's and EIS's, the revised order should be clear about the federal government's exclusive authority in matters related to the regulation of aviation and underscore the importance of substantive regulatory provisions relating to aircraft and airport operations and passenger safety in all aspects of regulatory decision-making. FAA's response: Comment noted. However, this discussion is outside the scope of Order 1050.1E.

Invasive Species. Hawaii DOT comments that the definition of invasive species as alien species whose introduction is likely to cause economic or environmental harm to human health is not understandable. Order 1050.1D defines invasive species as those likely to cause economic or environmental harm or harm to human health. This definition makes more sense. FAA's response: We concur and have modified the definition as requested (see revision at Appendix A, section 8.1).

Scoping. A commenter notes that their state environmental protection act has long provided a mandatory scoping process. The commenter supports a scoping process for federal actions. FAA's response: Scoping is mandatory for an EIS. See figure 5–1 and paragraph 505 in Chapter 5. Paragraph 505a notes the utility of using scoping documents.

Extraordinary Circumstances. The DOI notes that many in the list of extraordinary circumstances use the word ''significant,'' which DOI believes predetermines the NEPA decision, and allows the use of CATEX's in all but the most severe cases. NPS is concerned that under this wording, most of the airport issues on which NPS has worked with FAA in recent years may be CATEXed under the proposed wording. NPS believes that such exclusion would be improper. The word ''significant'' should be deleted from the extraordinary circumstances list, which would bring it in conformance with most other agencies and more consistent with NEPA. With the lack of public and agency notice normally provided for CATEXed projects, it is incumbent upon the FAA to ensure that only the most environmentally benign and non-controversial projects are CATEXed. As written, the FAA procedures allow the FAA to decide for the public and other agencies whether they should have an environmental concern about a project. If the FAA determines that the impacts are not ''significant'' using only FAA criteria, then neither notice nor documentation would be required to other agencies, stakeholders or the public. This power to decide for others without their knowledge must be used very judiciously to meet the requirements of NEPA. The DOI believes that the proposed procedures go too far. FAA's response: According to the CEQ regulations at 40 CFR 1508.4, Federal agencies may categorically exclude actions that do not cause significant individual or cumulative impacts. Consistent with environmental streamlining goals, the FAA intends to use CATEX's to the fullest extent provided for in the CEQ regulations. In so doing, it is not the FAA's intent to improperly substitute CATEX's for EA's or EIS's, or to overlook or foreclose additional considerations that are merited for unique areas. The final Order 1050.1E clarifies FAA's approach to CATEX's by removing the ''significant'' terminology from the listing of extraordinary circumstances and using the guidance in Appendix A to determine when an extraordinary circumstance triggers an EA or EIS. The guidance in Appendix A includes a high level of detail on how to determine the severity of impacts for each environmental resource. It also provides for special analytical consideration to be given to unique areas such as national parks, national wildlife refuges, and Tribal sacred sites. Prior to finalizing Order 1050.1E, the FAA has extensively reviewed the proposed CATEX's and extraordinary circumstances provisions in Chapter 3 with CEQ to assure conformity with CEQ regulations.

FAA Point of Contact for NEPA Consultants. A commenter notes that the FAA has an internal chain of command by which it operates and can seek clarification when it deems appropriate to do so. The commenter

further notes that a considerable portion of the compliance activities and required documentation identified in the order is conducted by sponsors and consultants who are not afforded this same access to FAA experts. While it may not be readily apparent to FAA, there is a genuine need for a process or point of contact or hotline for project sponsors and/or contractors and maybe even anonymous FAA staff to be able to call for clarification or conflict resolution without going directly through the responsible FAA official or the FAA approving official or the decision maker or their respective designees. There are times and situations more often than we would all like to admit when the direct and immediate clarification of a point or a facilitated review by a staff expert in process or law conducted in a safe setting without repercussions would be beneficial to all. It is difficult to know and implement all of the numerous and unwieldy and varied environmental regulations, policies and processes, etc. Establishing this process will promote understanding and enhance consistency in application of the order, preempt the current hit or miss resolution process of challenging your FAA point of contact. This approach works but is equally riddled with potential for embarrassment, insult, confrontation, the possible escalation of an issue and sometimes the application of political muscle prior to obtaining the necessary clarification. This current method is not productive for anyone involved, does not facilitate the process or working relationships with FAA and can deteriorate the credibility of the process in this order. This needs to be handled in an easily accessible, non-incriminating and non-punitive way that will not undermine anyone's official role or integrity. It can be anonymous or it can be a ''safe'' exploratory forum. Rather than circumventing anyone's roles and responsibilities, this could be designed and used in a manner to enhance it. It seems appropriate to incorporate such a process in this order. It could provide real insight into the genuine struggles associated with the FAA order and NEPA requirements and clarify needs. FAA's response: Part of the job of the FAA responsible official is to ensure that consultants and project sponsors are aware of the environmental requirements administered by FAA that are applicable to particular projects. It is not FAA's intent in Order 1050.1E to establish an alternative responsible FAA individual or alternative environmental communication channel within FAA for consultants and sponsors. Other knowledgeable FAA staff and responsible FAA management are generally well-known to sponsors and consultants and can be engaged when additional opinions and assistance are requested. Anonymous contacts are seldom useful in resolving questions or disagreements on a project's environmental review.

Land Use Compatibility. The DOI comments that the proposed approach in the notice assumes that the FAA's authority to govern airspace takes precedence over land management agencies' authorities to manage the lands under the airspace. While it may be true in a few isolated cases (*e.g.*, safety or national security in narrowly defined circumstances), DOI is aware of no law specifying that FAA's airspace interest or authority overrides a land management agency's interest or authority. The land management agencies have various authorities to manage the lands irrespective of the FAA's authority to manage the airspace. DOI thinks this applies broadly to other Federal and State land management agencies as well, but it certainly applies to lands managed by the NPS. The NPS, under 16 U.S.C. 1 *et seq.*, possesses broad and sole authority to manage the lands, resources and visitors in the areas under its charge. In NEPA terms, this includes ''special expertise'' and ''jurisdiction'' concerning any actions affecting units of the national park system. This authority cannot be ceded to or superceded by another agency. This authority includes the responsibility to determine the nature, extent, and acceptability of impacts on park resources and visitors, as broadly defined, consistent with the body of management decisions the NPS makes concerning a park. Therefore, the DOI believes the agencies are obligated to work with each other to assess the impacts of any airspace proposals and to resolve any differences and that any conflicts between an FAA airspace proposal and the land use plans or policies of a land management agency must be clearly considered in a NEPA document. FAA's response: The FAA disagrees that Order 1050.1E assumes that FAA exercises any precedence over DOI's land management authority. Order 1050.1E guides the FAA in carrying out it's responsibilities under NEPA and other environmental law pertinent to FAA decisions and actions. Under NEPA, the responsibility for assessing the impacts of a proposed Federal action resides with the Federal decisionmaking agency. The FAA is responsible for Federal decisions concerning civil aviation and for determining the best available methodology and impact criteria to use in its assessments. This responsibility does not transfer to the NPS at the boundary of a national park. The FAA recognizes the special expertise of the NPS and routinely consults with the NPS on potential impacts on national parks. As an agency of the U.S. Department of Transportation, FAA must comply with Section 4(f) of the DOT Act (re-codified as 49 U.S.C. 303(c)). In doing so, it thoroughly evaluates effects of aircraft noise on uses for which parks, refuges, recreational, and historic sites were established. FAA consults with NPS and other agencies having jurisdiction over these special areas in determining if noise would substantially impair use of these important areas. It is the FAA's goal to develop common criteria and reach consensus with the NPS on aviation impacts on national parks.

Another commenter is very deeply concerned that further erosion in the rights of citizens and degradation of environmental quality will result from the implementation of these rule changes. At the Hanscom Field Airport, the commenter believes that these rule changes can and will result in damage to Historical, Natural, and Cultural Landmarks, in contravention of NEPA and the NHPA. The commenter is alarmed that the FAA continues to take actions which directly assault U.S. citizens and U.S. Landmarks, instead of working to make aviation a tolerable neighbor. The commenter believes these rule changes, and the recent attempts to bully the EC into relaxing the environmental regulations relating to Hushkits, are fueling an image that the FAA is bought and paid for by aviation interests instead of serving the people of the USA. The commenter believes that these actions will simply polarize more and more people against the FAA.

Therefore, the commenter asks that in the final order, delete all references to Part 150, its attendant ''land use compatibility table,'' and any references to 65 DNL as a meaningful threshold. FAA's response: As discussed in previous FAA responses on aircraft noise and Part 150, there is a reasonable and non-arbitrary basis for the use of the DNL metric, the criterion for the threshold of significant impact (A significant noise impact would occur if analysis shows that the proposed project will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure), and the use of the land use guidelines in Table A of Part 150. However, the FAA recognizes that

special consideration needs to be given to the evaluation of the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges and historic sites, including traditional cultural properties. For example, the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. Further, the FAA recognizes that Part 150 guidelines may not be sufficient to determine the noise impact on historic properties where a quiet setting is a generally recognized purpose and attribute, such as a historic village preserved specifically to convey the atmosphere of rural life in an earlier era or a traditional cultural property. (See sections 4.3, 6.2 and 14.3 of Appendix A). Section 4.3 of Appendix A also instructs that Part 150 land use guidelines are not applicable to determining noise impacts on wildlife.

A commenter believes that inclusion of the ''land use compatibility'' table from Part 150 implies at least that the noise impacts outlined therein amount to a default definition of what constitutes a '''significant effect on the quality of the human environment.'' In directing the FAA to adopt the Part 150 regulations, Congress did not intend to give the FAA carte blanche to define on a universal basis what constitutes a ''significant effect on the quality of the human environment.'' The FAA has never conducted a rulemaking that would have offered the public meaningful notice that the FAA intended to adopt such a rule. To the extent the FAA regards the current proceeding involving the proposed order 1050.1E as something other than a rulemaking, the FAA has not provided such notice either. Accordingly, the commenter asks that either (1) The final order delete all references to Part 150 and any references to 65 DNL as a meaningful threshold; or (2) The final order expressly state that notwithstanding any inclusion of or reference to Part 150, any inclusion of or reference to the Part 150 ''land use compatibility'' table, or any suggestion that ''65 DNL'' constitutes a meaningful threshold, that none of those references suggest that the substance of those provisions define a significant effect on the human environment for the purposes of NEPA. FAA's response: The FAA disagrees with the commenter regarding the use of 1.5 dB and greater increases in noise at or above DNL 65 dB as a significant threshold and the value of the Part 150 land use guidelines. The FAA has provided for public notice and comment on the use of DNL 65 db as the threshold for compatibility of residential and most other land uses in adopting 14 CFR part 150. The FAA established 1.5 dB increases within the DNL 65 dB contour as a significance threshold in Attachment 2, FAA Order 1050.1D, dated 12/21/83, 49 FR 28501, July 12, 1984. Moreover, the FAA has provided for public notice and comment on this threshold as part of this update of its NEPA guidance. Through the FAA's NEPA guidance, and 14 CFR part 150, there has been ample public notice and opportunity to comment on DNL 65 dB as a significance threshold. The FAA recognizes that the Part 150 guidelines may not be, or are not, sufficient in all circumstances. This issue is further discussed earlier in this preamble under the heading ''65 dB Level.''

Responsible FAA Officials. The Department of Agriculture notes that throughout the notice the FAA discusses the ''responsible FAA official.'' It would be helpful to the reader to have a chart of possible responsible officials for each type of action. FAA's response: This order is not intended to provide such specific information that may change according to the proposed project and working assignments within FAA. Each FAA EIS and EA/FONSI includes the name of the responsible FAA official and how to contact that official.

Glossary. A commenter recommends a ''Glossary of Terms'' be added as an appendix. FAA's response: A Glossary of Acronyms exists and has been updated. Additionally, Chapter 1, paragraph 11 provides definitions of terms. Otherwise, terms used in Order 1050.1E reflect CEQ regulation terminology.

Chapter 1 Comments:

General Chapter 1 comments. One commenter asked for identification of how to obtain changes or updates or new guidance prior to their incorporation into this order. FAA response: Any changes or updates are provided when they are formally issued through the **Federal Register**, AEE, and the FAA Web site.

One commenter noted that NEPA documents in electronic format is a good idea, but there would still need to be hard copies for review. FAA's response: For public dissemination purposes, hard copies will remain available and will be provided as requested. Electronic versions of NEPA documents may be used by the FAA as a supplement to the distribution of printed versions.

Regarding paragraph 2, the distribution notice in the final Order was changed to accommodate the ongoing changeover of distributing electronic versions of directives instead of printed copies. The distribution provides information on where the public, who may not have access to the internet, may, for a fee, obtain hard copies of the Order (photocopy or computer printout) from the FAA.

Beginning of comments on Paragraph 5: A commenter believes that the change identified as paragraph 5c (incorporating Tribal considerations into FAA's NEPA procedures) has public appeal and may appear politically correct, but it will not protect Tribes from the same fate as a ''substantial number of persons affected by the [FAA] action'' when the FAA disregards its obligations to NEPA, and to local governments and to citizens. The commenter believes that the FAA has a track record of neutralizing NEPA by approving its own requests for CATEX's in order to implement actions that significantly and detrimentally impact the human environment. The commenter believes that adding Tribes to the list of persons affected by FAA's actions under 1050.1D may add appeal to 1050.1E, but it will have no impact on protecting the Tribe's human environment from injurious FAA actions. FAA's response: The FAA is providing appropriate means for Tribes to participate in the NEPA process and ensure that Tribal concerns are considered in FAA decisionmaking.

A commenter noted that the changes identified in paragraphs 5d and 5f (and associated paragraphs 210 and 305 respectively) have the effect of releasing FAA from documenting their decision to approve a CATEX for an action. The commenter believes this absolves every FAA Official from taking signature responsibility for a decision to apply a CATEX. The persons who are affected by an FAA action are therefore left with no mechanism to recall a faulty or fraudulent decision made by an FAA Official to employ CATEX's. The commenter strongly urges the FAA to rewrite the changes to require documentation for signature approval for the use of CATEX's in order to prevent further abuses of the NEPA process. The commenter believes that the CATEX is a ''loophole'' which allows the FAA to forge ahead with any and all plans for airport expansion or flight traffic route changes while circumventing NEPA and the protection it should afford the general public. FAA's response: NEPA and its implementing CEQ regulations do not require documentation of the use of

CATEX's. Once CATEX's are promulgated with notice and public procedure, CEQ guidance discourages repeated documentation that an activity is CATEXed. In final Order 1050.1E, documentation of an individual CATEX is optional.

A commenter noted that the change identified in paragraph 5h and the associated paragraph 404d, claim to provide procedures for enabling the FAA Official to adopt EA's prepared by other agencies and require the FAA official to make a written evaluation of an adopted EA, take full responsibility for that EA ''and issue [her/his] own FONSI. It appears as if this allows the FAA to choose to adopt only those EA's that are favorable to their plans. This should be rewritten to indicate that issuing a FONSI based on an adopted EA is not a foregone conclusion. It may be more appropriate to conduct an EIS or choose not to implement the FAA action. This should also be written to require third party, objective reviews of EA's for the adoption process and require the FAA to adopt all EA's which did not result in a FONSI. These paragraphs also require the FAA Official to take signature responsibility for an adopted EA. At first glance this seems favorable, but the system that allows the FAA to approve its own adoption of an EA has an inherent conflict of interest. The commenter believes that the FAA has a track record of neutralizing NEPA by approving its own requests for CATEX's. This proposed change will allow FAA to make selective use of EA's that favor the FAA's preferred alternative of implementing an action that my be detrimental to the human environment. This should be rewritten to require adoption of EA's to be allowed only after EPA and public review. FAA's response: The CEQ regulations allow Federal agencies to adopt EIS's at 40 CFR 1506.3, and agencies are allowed to use the same procedures to adopt an EA. Federal agencies are responsible for the adequacy and accuracy of environmental documents used in their decisionmaking processes.

A commenter noted that there were several new proposed appendices included in 1050.1E, but they are not included in the **Federal Register** notice. They should be made available for public comment. FAA's response: These appendices are simply transcriptions of existing documents such as the CEQ regulations that are otherwise publicly available. The appendixes in question have been removed from the final order.

Beginning of Paragraph 6 comments: Considering paragraph 6a, The Department of the Interior (DOI) noted that it concurs that avoidance or minimization of adverse effects of proposed actions, and the restoration or enhancement of resources and environmental quality is the appropriate policy for NEPA compliance. However, such a policy is not consistent with the use of ''significant'' in the CATEX's and extraordinary circumstances, and provides a reason to delete those terms in those sections. FAA's response: The FAA does not see any inconsistency between the NEPA policy statements and the provisions for CATEX's. The CEQ regulations at 40 CFR 1508.4 define CATEX's as a category of actions which do not have a significant effect on the human environment, and the regulations require that agency procedures for CATEX's ''provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.'' The use of a ''significant'' context in relation to extraordinary circumstances is therefore appropriate and has been reviewed with CEQ. As described in a previous response to DOI, the final Order 1050.1E uses the detailed resource impact guidance in Appendix A to determine when an extraordinary circumstance triggers the preparation of an EA or EIS. (see *Extraordinary Circumstances* under the heading ''Comments on General Subject Matter'' earlier in this preamble)

A commenter noted that the emphasis seems to be on the consideration of the effect on the human environment. Isn't consideration of the effect on natural resources or natural environment and equal consideration? It does not appear to be presented that way throughout the order. The commenter asks for clarification or modification. FAA's response: See paragraph 11b where the CEQ definition of natural environment has been added for clarification.

A commenter noted that Order 1050 outlines the procedures by which the FAA will conform to requirements of NEPA and the CEQ regulations. NEPA requires that before taking an action that might significantly affect the quality of the human environment, the FAA give careful consideration to the potential environmental consequences of the proposed action. The FAA must also consider the cumulative environmental impacts of actions. FAA's response: The FAA does consider the potential environmental consequences, including cumulative impacts. See Chapter 5, paragraph 506f.

Beginning Paragraph 7 comments. Considering paragraph 7a, a commenter asked that the text ''reasonable time'' be defined or a limit placed on it. FAA's response: The paragraph was revised to remove the time requirements. It should be noted that all components of the FAA must comply with 1050.1E. Supplementary procedures issued by a component of the FAA will be consistent with 1050.1E.

The FAA amended paragraph 7b(1) to indicate that publishing explanatory guidance developed by a program office in the **Federal Register** for notice and public procedure is encouraged but not mandatory. If the explanatory guidance complies with Order 1050.1E, further public involvement should not be required.

Beginning Paragraph 10 comments. A commenter asked that the word ''substantially'' as used in paragraph 10 be defined and questioned how one could be advised of when the Administrator has specifically reserved authority to make changes and updates. FAA's response: Order 1050.1E establishes FAA policies and procedures for compliance with NEPA and also provides certain explanatory guidance. Establishment of, or substantial changes to, policies and procedures under Order 1050.1E are subject to the notice and public procedure requirements of 40 CFR 1507.3(a). The specific procedures included in Order 1050.1E that are subject to notice and public procedure are identified under 40 CFR 1507.3(b). *Explanatory guidance,* whether established within Order 1050.1E or by other agency directives or documents, is not subject to those notice and public procedure requirements. A *substantial change* to the policies and procedures prescribed under Order 1050.1E is the establishment of, or a change to, any procedure identified in 40 CFR 1507.3(b) which will (1) alter to a lesser level the level-of-review of a class of actions within the NEPA review process (*i.e.,* whether a class of actions normally requires an EIS; normally requires an EA but not necessarily an EIS; or normally is categorically excluded); (2) alter any period of time set pursuant to 40 CFR 1507.3(d) as necessary to comply with other specific statutory requirements; or (3) alter any notices to, or any interaction with, the public, private applicants, or non-Federal entities. For example, a substantial change to the categorical exclusions provided in Order 1050.1E would be the addition of new categorical exclusion or a change to an existing categorical exclusion (or the list of associated extraordinary circumstances) such that the scope of the given categorical exclusion is expanded to include actions previously normally subject to an EA. A substantial change to the list of actions which normally require an EA

but not necessarily an EIS provided under Order 1050.1E is a change such that an action or class of actions previously normally subject to an EIS is removed from that list (paragraph 501) and placed in a lower level of review (*i.e.*, moved to the list of action which normally require an EA but not necessarily an EIS (paragraph 401)).

The following are examples of changes that are not substantial relative to the notice and public procedure requirements of 40 CFR 1507.3: (1) Editorial changes, including re-writing to comply with the ''plain language'' requirements of E.O. 12866 and Presidential Memorandum on Plain Language in Government Writing, and including any re-structuring of the existing text; (2) adding to a list of embedded examples (a ''such as'' list); (3) reducing the scope or adding a condition (a restriction on the application) to an existing categorical exclusion. Regarding the commenter's issue with the authority of the Administrator to issue changes to FAA directives, the Administrator has statutory authority to issue such documents. The Administrator has the authority to delegate the authority to issue changes and revisions of directives to lower level managers (see FAA Order 1320.1D, ''FAA Directives System''). However, the Administrator may at any time and without advance notice re-assume sole authority to approve a change or revision to any FAA directive.

Beginning Paragraph 11 comments. Considering the definition for ''noise sensitive areas'' under paragraph 11b(9), DOI raised the issue that noise sensitive areas are still noise sensitive whether they are outside the 65 DNL contour or inside the contour. This definition should simply define the term, and should not mix the definition with policy related to such areas. The discussion in this section that excludes noise sensitive sites beyond a certain distance seems arbitrary. If the noise interferes with normal activities associated with a site, the level and distance should not matter; in such cases, the impacts and mitigation should be thoroughly evaluated in an EA or EIS. The impact is what is important, not a criteria which may or may not apply in a particular situation. FAA's response: The FAA has amended the definition in the final Order to recognize that there are unique areas outside of a residential setting where the DNL 65 dB standard either may not or does not apply and where determinations of the appropriate noise assessment methodology and impact criteria must be made based on the specific uses of these areas.

A commenter asked what constitutes a large or small rocket in defining the extent of a noise sensitive area around a launch facility. FAA's response: There are no large or small rockets regarding the extent of noise they produce. All rockets are noisy when compared with normal daily noise-producing activities. The size of the noise sensitive area in a launch facility depends on the types of rockets launched, the location of the facility, its topography, and the species found in the general area.

The FAA added definitions for ''applicant,'' ''human environment'' and ''launch facility'' (see paragraphs 11b(1), 11b(6) and 11b(7) respectively).

Chapter 2 Comments

Beginning General Chapter 2 Comments. A commenter noted that in paragraphs 208 and 212, and other similar sections, the FAA proposes to directly coordinate with public or regulatory review agencies at least at the state and local levels. The commenter indicated the FAA should include the sponsor when directly approaching the public and or regulatory review agencies, if there is one. The FAA could unintentionally step into or interfere with local issues that could be detrimental to one or all. FAA's response: The FAA concurs and has revised the cited paragraphs accordingly.

A commenter noted that Chapter 2 has been expanded significantly, with particular emphasis on the early coordination of the requirements under various environmental statutes. The Introduction states that ''NEPA * * * provides a means for efficiently complying with related statutes, orders, and regulations.'' It also states that '' * * * the responsible FAA official can use the NEPA process most effectively as an umbrella process or vehicle for giving appropriate consideration to specific environmental concerns. * * *'' These goals are laudable as long as the integration of compliance is not misinterpreted as an enhancement of authority. The revised Order should include the appropriate cautionary language. FAA's response: Chapter 2 clarifies the responsibilities that FAA has always had under NEPA and is not an enhancement of authority.

Beginning Paragraph 200 Comments. A commenter noted that paragraph 200 implies that airport master plans and NEPA processing should proceed simultaneously, or as nearly so as possible, yet some FAA officials continue to fear that there is something inappropriate about that. Suggest additional clarification here. FAA's response: The text in paragraph 200 is intended to clarify and emphasize the concern of the commenter.

Concerning paragraph 200a(1), a commenter noted that NEPA compliance includes providing for actions that are categorically excluded from NEPA processing. In order to provide thorough consideration of NEPA compliance the decisionmaker should also determine whether the NEPA process for an action justifies consideration of a Categorical Exclusion Determination, not just an EA or EIS. This section might be revised to the following: ''200a(1) Whether an action is categorically excluded from further environmental considerations, or requires an EA or an EIS.'' FAA's response: The FAA concurs and has revised the cited paragraph accordingly.

Beginning Paragraph 201 Comments. Regarding paragraph 201(a), a commenter indicated that the decisionmaker must also consider whether or not the action justifies consideration of a Categorical Exclusion Determination, not just an EA or EIS. The statement ''the FAA can take action without further environmental review'' gives the impression that no documentation of the decisionmaking process is warranted. The decisionmakers should document the entire decisionmaking process, including preparing a Categorical Exclusion Determination document. FAA's response: The FAA has previously responded that CATEX's are not required to be individually documented. CEQ discourages such a practice. CATEX documentation is optional, and Order 1050.1E reiterates this.

Regarding paragraph 201c, the DOI indicates that, consistent with the stated NEPA policy in paragraph 6a, mitigation should be included in a FONSI not only when it reduces impacts below a threshold of significance, but also when it avoids or minimizes any adverse effects of the action. The DOI believes this to be an extremely important point, that mitigation be used in all cases where it makes sense, not only in those cases where it is needed to avoid an EIS. FAA's response: Paragraph 201c is intended to describe a particular type of FONSI—a mitigated FONSI. The mitigation of adverse impacts in a FONSI, not only where mitigation is needed to avoid an EIS, is recognized in Chapter 4 of Order 1050.1E.

Concerning paragraph 201d, a commenter suggested that the text ''the responsible FAA official may prepare a ROD * * *, be changed to ''may submit a prepared ROD. * * *'' FAA's response: The text in question has been revised to clarify that the FAA may

issue a ROD no sooner than 30 days after publication of the notice of availability of the FEIS by EPA in the **Federal Register**.

Regarding paragraph 201e, a commenter asked if there is a process for relief if it appears that the FAA is asking for what reasonably seems to be too much. The commenter is concerned that there are times that the regulatory agencies and sponsor believe this is the case and do not see satisfactory recourse. FAA's response: There is no formal recourse process in the Order. When such situations occur, they are informally discussed and resolved.

Beginning Paragraph 202 Comments. A commenter notes that paragraphs 202(a) and (2) state that the responsible FAA official should initially review whether the proposed action: (2) would be located in * * * habitat of Federal listed endangered or threatened species or affected wildlife * * *? What is affected wildlife? Some wildlife will be living in that habitat. The FAA needs to clarify what they mean by affected wildlife because the current language infers some special legal status on ''affected wildlife,'' since it is linked in this paragraph to Federal listed endangered species. FAA's response: The FAA agrees with the commenter's concern and has consequently removed the text ''affected wildlife.'' The same commenter indicates that an addition needs to be made to address wildlife hazards including the review of a proposed action if said action could increase wildlife hazards to aviation and/or subsequently affect human health and safety. FAA's response: Wildlife that are hazardous to aviation are addressed in Appendix A, section 8.2(c).

Regarding paragraph 202, DOI believes that the word ''significantly'' should be replaced with ''adversely.'' FAA's response: The FAA disagrees. This paragraph is intended to be an initial review for significant impacts. The text in question is essentially from NEPA and the CEQ regulations. DOI also recommended that ''cultural resources'' should be added to the list in paragraph 202a(1). FAA's response: We concur. Cultural resources have been added. DOI also believes that the initial review should also include areas ''located near noise sensitive areas'' and actions that may ''adversely affect noise sensitive areas.'' FAA's response: This level of detail is not appropriate for Chapter 2, which is a general overview. Appendix A provides the detailed guidance for noise impact assessment.

Beginning Paragraph 203 Comments. A commenter recommended that this paragraph and paragraph 204 clearly state that in third-party contract situations, FAA maintains the same oversight and control as it would if FAA were paying the contractor. FAA's response: This information is included in Appendix B, specifically dealing with third-party contractual arrangements.

Regarding paragraph 203c, a commenter asked what constitutes commencement of an EA or EIS. FAA's response: The issue is discussed in Chapters 4 and 5. The FAA has slightly revised paragraph 203c to add the phrase ''no later than'' before the text string ''immediately after the FAA receives the application or proposal'' per 40 CFR 1502.5(b), Timing.

A commenter noted that paragraph 203 should clarify the circumstances under which applicants can prepare EA's. Paragraph 203(b) states only that ''Applicants may prepare EA's.'' Overall, paragraph 203 makes the distinction between (1) ''actions directly undertaken by the FAA,'' and (2) actions ''where the FAA has sufficient control and responsibility to condition the license or project approval.'' Paragraph 203 is clear in stating that, in case (1), FAA may prepare EA's or EIS's, or use contractors. But paragraph 203 should be clearer in defining what shall occur in case (2). Paragraph 203 should also address how the conflicts of interest mentioned in appendix B would be avoided by applicants who prepare EA's. In some EA's, the distinction between ''significant'' and ''non-significant'' impacts is non-straightforward, and the EA's can be large and important documents. In such cases, the assurance that the preparer has no conflict of interest can be very important. Paragraph 203 should make it clear that the FAA has responsibilities to ensure that any applicant-prepared EA's meet several of the tests mentioned in paragraph 2f of Appendix B, *e.g.*, the FAA is still responsible for exercising oversight to ensure that a conflict of interest does not exist and performing independent evaluation of the document. Paragraph 203(b) might be revised to read as follows: Where the FAA must evaluate applications and has sufficient control to conditionally approve the license or project, applicants may prepare EA's but not EIS's. If the applicant prepares an EA, the FAA must perform an independent evaluation of the EA and ensure that an applicant's potential conflict of interest does not impair the objectivity of the document. Applicants may fund the preparation of EIS's through third-party contracting (see paragraph 204 and Appendix B). In such cases, the role of the applicant is limited to providing environmental studies and information. FAA's response: The FAA agrees that this paragraph would be more helpful if it included more information about the affirmative role and responsibility of the FAA under 40 CFR 1506.5(a) and (b). Revisions substantially similar to those proposed by the commenter are adopted. Paragraph 203(b) was further revised to more closely conform to the requirements for incomplete or unavailable information as provided under 40 CFR 1502.22.

Beginning Paragraph 204 Comments. One commenter believes that paragraph 204 indicates that when a contractor prepares an EIS, FAA will require that the contractor execute a disclosure statement ''specifying that the contractor has no financial or other interest in the outcome of the action.'' The final Order should provide further guidance on the type of interest that would be inappropriate, with particular emphasis on the types of projects that involves FAA approvals. FAA's response: CEQ is the best source of additional guidance. See questions 17a and 17b of 40 Most Asked Questions Concerning CEQ's NEPA regulations for this guidance. This CEQ document is available on the Web site of the FAA Office of Environment and Energy (*http://www.aee.faa.gov*).

The FAA expanded paragraph 204b to clarify the issue of contractor conflict of interest and to include definitions for the terminology ''final design work'' and ''preliminary design work.''

Beginning Paragraph 205 Comments. A commenter noted that this Order's effective date should be stated so that all studies begun after a specific date will need to comply with Order 1050.1E. FAA's response: The final order will be effective on the date of the signature of the Order. See paragraph 12 for instructions on environmental review work in progress or completed.

Beginning Paragraph 206 Comments. The FAA determined that the proposed introductory paragraph should have stated that the restriction on ''any action or irretrievable and irreversible commitment of resources'' applies only to EIS's—not EA's as proposed. The text was amended accordingly in the final order to properly correspond to the requirements of 40 CFR 1506.1.

Regarding paragraph 206b, one commenter noted that paragraph 206a is too vague and arbitrary and needs definition or reference. Should this only apply in cases where an EA may potentially become an EIS? FAA's response: The provision states ''may also be considered,'' and is therefore not a requirement. See Chapter 4, paragraph 405.

Regarding paragraph 206b, it was noted that it would not be prudent for the FAA to acquire an interest in land prior to completion of required NEPA documents as proposed in paragraph 206b(1) of the notice. Accordingly, the last two sentences of the proposed paragraph were deleted and the existing provisions of Order 1050.1D, Appendix 5, paragraph 1b(5) and Appendix 1, paragraph 6d were carried forward into final Order 1050.1E as paragraph 206b(2). The existing provisions allow the FAA to contact property owners under certain circumstances and to acquire options for land in limited circumstances; but the FAA may not make a final decision on acquisition prior to completion of the NEPA review and associated documentation. Paragraph 206b(1) was further amended in the final Order to indicate that a transfer of title or other interests in real property is not a major Federal action significantly affecting the environment unless the acquisition ''effectively limits the choice of reasonable alternatives''. The adopted change more clearly conforms to the CEQ regulations.

Concerning paragraph 206c, the DOI comments that responsibilities under section 4(f) of the DOT Act are correctly stated here. However, lands such as units of the national park system should receive ''particular attention'' as noise sensitive, light sensitive, culturally or ecologically sensitive, etc., as appropriate, irrespective of section 4(f) of the DOT Act. FAA's response: Guidance on the analysis of impacts on environmental resources in Appendix A gives particular attention to unique areas, such as units of the national park system, irrespective of section 4(f) of the DOT Act.

Paragraph 207 Comment. Regarding paragraph 207a, the DOI believes, for the record, the National Parks Service possesses special expertise and jurisdiction regarding the management of and the nature, extent, and acceptability of impacts on park resources and visitors in units of the national park system that may be affected by FAA actions. Whenever any action has any potential to affect any unit of the national park system, the NPS should be notified at the earliest possible stage of planning. FAA's response: The Order provides for appropriate notification of affected agencies and officials, including DOI and NPS.

Beginning Paragraph 208 Comments. The FAA split the contents of the proposed paragraph 208 into two paragraphs: the adopted paragraph 208 discusses public involvement and paragraph 209 discusses public hearings, workshops and meetings. Regarding paragraph 208b, the first sentence was changed in the final Order to correctly identify and conform to the requirements of 40 CFR 1501.2 which prescribes early interaction of the Federal agency with the affected communities and agencies.

Beginning Paragraph 209 Comments. The Wisconsin DOT comments most public hearing records for EA's are currently kept by airport sponsors or their agents. This would be a very burdensome requirement for airport sponsors and would be a massive record keeping task for the Chief Counsel's office. Delete this requirement. FAA's response: Order 1050.1E does not require public hearings for EA's. Public hearings for EA's are discretionary on a case-by-case basis, as appropriate.

A commenter asks that terms such as ''degree of interest'' and ''national interest'' be defined, at least in the contexts in which they are used. FAA's response: These terms do not lend themselves to precise definitions, but the circumstances are usually apparent when present.

Regarding paragraph 209c, a ''draft FONSI'' was removed from the requirement that draft EA's and EIS's should be made available to the public at least 30 days prior to a public hearing, meeting, or workshop. The inclusion of a draft FONSI could be misconstrued as the government having already decided on a finding of ''no significant impact'' when the purpose of the hearing, meeting, or workshop is to solicit public input on the findings of the environmental analysis prior to a government decision based on the findings. The change was made accordingly in the final order.

In response to an internal comment, additional information is provided on the FAA's out-reach efforts to notify and involve potentially affected minority and low-income populations at the earliest stages of project planning. The additional information also notes that provisions should be made to accommodate the needs of the elderly, handicapped, non-English speaking, minority and low-income populations in the FAA's public involvement efforts. This information is provided under paragraph 209d.

Paragraph 210 Comment. Regarding paragraph 210a, a commenter noted that if data standards are to be met, the standards should be included or a better reference source should be included. FAA's response: A **Federal Register** citation has been added. Paragraph 210b was changed in the final Order to identify Department of Transportation ''Information Quality Guidelines'' prepared pursuant to OMB guidelines (Pub. L. 106–554) which prescribe guidelines for the objectivity, utility and integrity of disseminated information. In accordance with the DOT guidelines, paragraph 206b also provides (1) the public comment and participation process for a draft EIS satisfies the process for requesting correction of information; (2) any corrections deemed appropriate will be included in the Final EIS; and (3) a request for corrections to a Final EIS or for reconsideration of a request for corrections may be handled as though it were a request for a Supplemental EIS.

Regarding paragraph 211 which identifies incorporation by reference as an allowable CEQ procedure, additional text was added to paragraph 211d of the final Order concerning the use of hyperlinks to documents that are stored and maintained electronically in order to facilitate public access to such documents that are incorporated by reference in a NEPA document. As a reminder to FAA NEPA practitioners, similar text referring to incorporation by reference was added to paragraphs 404d, 405c, 405e, 405f(1), 500B, and 506f in the final Order.

Paragraph 212 Comment. Regarding paragraph 212b, a commenter believes that cautionary language should be added to ensure that a ''piecemeal'' approach to NEPA analysis is not encouraged. For example, FAA should address airspace issues associated with a new airport in the same NEPA document that addresses airport construction. The two actions are inextricably linked, yet FAA has not always addressed them together since different divisions within the FAA are responsible for each part. FAA's response: Instructions on FAA actions that should be environmentally reviewed together are in paragraph 500 of Order 1050.1E.

Beginning Paragraph 213 Comments. Regarding paragraph 213, the DOI believes there are more than just executive orders that bear on interagency coordination (*e.g.*, executive memoranda, memoranda of agreement, etc.). There should also be a paragraph discussing other Federal agencies, especially Federal land management agencies such as NPS, BLM and Forest Service which manage large tracts of land that may be affected by FAA actions. FAA's response: Paragraph 213 provides a broad, general discussion. The Order in entirety provides greater detail on the appropriate involvement of affected agency officials, including federal land management agencies. Also, the FAA has revised the second sentence in paragraph 213b(2) to add at

the beginning ''For regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on Federally-recognized Tribes.'' Executive Order 13175 provides for consultation concerning ''Federal policies that have tribal implications.'' The text added to the final order sets forth the definition of the policies that require consultation under Executive Order (see EO 13175, section 1(a) and FAA Order 1210.20,''American Indian and Alaska Native Tribal Consultation Policy and Procedures'' (January 28, 2004)).

Paragraph 214 was amended in the final order to incorporate recent changes in the FAA organizational structure. Specific changes were made to recognize the Assistant Administrator for Aviation Policy, Planning, and Environment (AEP) and the Air Traffic Organization.

A commenter recommended that if the airport is in the vicinity of a National Park, special consideration should be given to consultation with the NPS both at the local and headquarters levels. FAA's response: As written, the order provides appropriate involvement of affected agency officials, including federal land management agencies. The commenter also recommended that the terms ''coordination and consultation'' should be defined more precisely, written submittals of materials should be specified, and the possibility of funding consultant services for the affected agencies and state and local governments should be discussed. FAA's response: Coordination and consultation range from brief review and comments to extensive discussions involving additional analyses. They must be suited to the particular project and its impacts and do not readily lend themselves to specific definitions that cover all circumstances. Some coordination and consultation involve written materials, but not all. The CEQ regulations discuss funding at 40 CFR 1501.6(b)(5).

Chapter 3 Comments

General Chapter 3 Comments: A commenter recommended that all sections describing categorically excluded actions include financial assistance and ALP approval as one of the potential federal actions. This is necessary because these guidelines are applied by FAA to projects at airports for which there is no specific federal aid for the particular proposed project, but nearly all airport projects are considered federal actions because the airport in general has been the recipient of federal aid in the past and because the proposed action may affect a change on one of the many ALP detail sheets considered part of the ALP and trigger an ALP approval. If this should not be the case, then please state so. FAA's response: The FAA agrees and has revised appropriate CATEX's in Chapter 3 to include the Federal actions of financial assistance and ALP approval. The same commenter asked whether a project by an airport proprietor using their own funds is still subject to NEPA review. FAA's response: Yes, if FAA must approve a change to the ALP.

Paragraph 300 Comment. A commenter believes there has always been a problem with the CATEX discussion in FAA documents that reference to public controversy is buried in text. Many readers focus on the specific project that is referenced in the CATEX list, concluding that it should rightfully be excluded. What the list really says is ''this project is excluded unless we determine that it should be included.'' That point should be made in a much more obvious way in the text. FAA's response: We concur. See revised wording in paragraph 303 and the addition of emphasized text at the beginning of each paragraph (307–312) containing the lists of categorical exclusions.

Regarding paragraph 301, the FAA action ''designation of alert areas'' is an advisory action and not subject to NEPA requirements. Accordingly, that action was removed from CATEX 311e and was added as paragraph 301c in the final Order.

Regarding paragraph 302, the FAA, in the final Order, revised the last sentence to read ''FAA will then consult with CEQ about alternative arrangements for complying with NEPA.''

Paragraph 303 Comment. A commenter first recommended that paragraph 303 should be revisited, since many of the DOD CATEX's are now incorporated into paragraphs 307–312 and then allow under paragraph 303 review and use of any supporting documentation DOD may provide for any DOD CATEX that is not listed or that is listed and for which we must review for extraordinary circumstances. In a subsequent comment, the commenter recommended strongly that text in question in paragraph 303 be removed since it would appear that the existing CATEX list will adequately cover the situation. It is the commenter's position that it is not appropriate for a Federal agency to adopt another Federal agency's decision. For example, an agency may adopt an EIS, but it prepares its own ROD, or adopts an EA, but it prepares its own FONSI. FAA's response: The FAA concurs and has removed the text in question and has removed references to the text in question from other locations in the final Order.

Beginning Paragraph 304 Comments. Regarding the introductory paragraph of paragraph 304, the FAA determined that the presence of one or more extraordinary circumstances(s) in connection with a proposed action is not necessarily a reason to prepare an EA. Accordingly, and after subsequent consultation with CEQ, the paragraph was amended in the final Order to indicate a determination of whether a proposed action that is normally categorically excluded should require an EA or EIS depends on whether the proposed action (1) involves any of the circumstances provided under paragraph 304 and (2) may have a significant effect on the human environment.

Regarding paragraph 304a, the DOI objects to having the word ''significant'' in that sentence, ''Likely to have a significant adverse effect on cultural resources pursuant to the NHPA. . . .'' Language in the Advisory Council on Historic Preservation regulations refers to ''No properties adversely affected.'' There is no qualifier in that language, and it should be removed from the sentence. Actions with the potential to adversely affect National Register eligible or listed properties should have an EA or EIS with public involvement to evaluate the effects. The purpose of developing an EA is to determine if effects are significant. If a CATEX is written instead, the public and other agencies never have a chance to comment on the severity of the impacts. FAA's response: Paragraph 304a has been revised to remove the ''significant impact'' terminology. It now refers to ''adverse effect''. Section 106 of the NHPA affords opportunities for consultation and public comment to evaluate federal undertakings that have the potential to adversely affect National Register eligible or listed properties. Whether the FAA may fulfill Section 106 and conclude the NEPA review with a categorical exclusion or is required to prepare an EA or EIS depends upon the potential for affect and the potential severity of the potential adverse effects established by consultation. If Section 106 consultation establishes adverse effects that may be significant, then at least an EA is required. In preparing the EA, the FAA must involve the public and other agencies to the extent practicable.

Regarding paragraphs 304(b), (c), (e), (f), (g), (h), & (k), the DOI believes that the same rationale applies here [as in the previous comment on paragraph

304a] concerning using the word ''significant'' with impacts associated with noise, ecology, air quality, water quality, visual nature, and traffic congestion. If there are any adverse impacts, not just significant adverse impacts, then the severity of the impacts must be documented in an EA or an EIS. The word ''significant'' must be deleted from all these extraordinary circumstances. If the impacts are ''significant'' in the NEPA sense, then an EIS is required. The general purpose of an EA is to determine if there are any ''significant'' impacts. Inserting the word ''significant'' into the CATEX's short-circuits a large part of NEPA. FAA's response: The FAA does not concur that ''any adverse impacts'' require an EA. The CEQ regulations at 40 CFR 1508.4 define CATEX's as a category of actions which do not have a significant effect on the human environment. Actions that have adverse effects that are not significant can properly be CATEX'ed under the CEQ regulations. As discussed above in response to a previous DOI comment on this point, the FAA has modified the guidance in paragraph 304 to clarify how to consider the potential for significant adverse impacts in determining whether extraordinary circumstances exist.

Regarding paragraph 304c, the DOI believes that to be consistent with CEQ regulations 40 CFR 1508.27(b), criteria here should also include unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, etc. FAA's response: Paragraph 304 has been revised to clarify that the potential for significant impacts should be considered using the circumstances identified in paragraph 304, guidance provided in Appendix A to Order 1050.1E, and the factors identified under 40 CFR 1508.27(b) (see paragraph 501 of Order 1050.1E). This procedure addresses the concern of the commenter. This procedure is consistent with the CEQ's regulations.

Regarding paragraph 304c, the DOI indicated that the reference to section 7 of the ESA should be removed. Species are not listed under section 7. Section 7 describes the conservation and consultation responsibilities of federal agencies. Section 4 of the ESA describes listing and recovery responsibilities. FAA's response: DOI is correct about the reference to section 7, which has been deleted in the final Order. With this change, the text is accurate.

Regarding paragraph 304k, the DOI believes that lighting impact should not be limited to residential areas and business properties. Lands such as units of the national park system may be adversely affected by lighting, and such impacts should be fully evaluated in an EA or EIS. FAA's response: The potential impact on the visual nature of surrounding land uses, which is also listed in paragraph 304k, is broad enough to include lighting impacts. The cross-reference to sections 11 and 12 in Appendix A provides further guidance.

Regarding paragraph 304, a commenter believes that the way the paragraph is written, all impacts listed in the same section are significant and require an EIS. There is no consideration for EA's as indicated. Rewording seems in order. FAA's response: That was not the intent. Paragraph 304 has been reworded as previously described. An action that is normally CATEXed could require either an EA or EIS. An EA or EIS can also be prepared as a matter of policy at any time to aid in agency planning and decisionmaking.

A commenter, an association, commented on two changes to paragraph 304. First, paragraph 304 indicates that significant adverse effects on cultural resources constitute an extraordinary circumstance. The commenter believes this is a higher standard than reflected in the current order. However, the commenter believes that this is an appropriate change. Second, paragraph 304 includes significant impacts to candidate species under the Endangered Species Act (ESA) among those that will require the preparation of some environmental documentation. The commenter believes that the ESA does not afford protection to ''candidate species'' and the revised order should not impose additional requirements beyond this. FAA's response: The commenter is correct that 1050.1E reflected a higher standard for extraordinary circumstances than 1050.1D. As explained above, in response to DOI concerns, paragraph 304 has been revised in final Order 1050.1D to delete the word ''significantly'' from the list of extraordinary circumstances. As revised, paragraph 304 provides for using the guidance in Appendix A to assess the potential for significant impacts in determining whether an action that is normally categorically excluded requires an EA or EIS. As to ''candidate species,'' the commenter is correct that the ESA does not afford protection for such species. The candidate list is maintained to provide, among other things, advance knowledge of potential listing that could affect decisions of environmental planners and developers. A candidate species is one for which USFWS has on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher priority listing actions. The USFWS encourages state and Federal agencies to give consideration to these species in environmental planning. Based on the FAA's experience, this is an area where exercising our discretion to exceed minimum requirements is cost-beneficial. Considering candidate species in the extraordinary circumstance factors enables FAA environmental planners and airport sponsors to assess potential impacts and adopt appropriate mitigation measures to alleviate threats. This approach may remove the need for USFWS to list the species. This approach also streamlines the environmental review process. It forestalls any requirement after the EA and FONSI or final EIS is issued to consider formal listing as new information requiring supplemental environmental documentation.

Concerning adding a reference to Tribes in paragraph 304, a commenter believes this obviously is a significant change to the level of environmental analysis required of the agency or applicant. The commenter, an association, believes that this additional burden should not be thrust on private parties, in particular, without some determination that the Tribal concerns or Tribal laws at issue are reasonable grounds for extending the analysis. The commenter recommends that the revised order should indicate that the appropriate FAA program office ensure that a reasonable basis exists for extending the environmental requirements. FAA's response: These references to Tribes in paragraphs 304c, g, h, i, and j, are consistent with the intent of NEPA, as implemented by the CEQ regulations. See, *e.g.* 40 CFR 1502.16(c) (requiring Federal agencies to consider possible conflicts between the proposed action and the objectives of Federal, regional, state, local (and in the case of a reservation, Tribe) land use plans, policies and controls for the area concerned). They modernize the extraordinary circumstance factors in 1050.1E to reflect the legal status of Tribes under recent federal environmental laws and executive and departmental orders. Under the Clean Air and Water Acts, Congress has determined that Tribes may have the competence and administrative capabilities to set air and water quality standards. Just as it does for the States, the U.S. EPA delegates to Tribes under

existing regulatory programs when the specific Tribe has demonstrated its ability to handle duties under either of these two Acts. The U.S. EPA steps in only when necessary to ensure that statutory standards are met. See also, Secretary of Interior and Commerce Secretarial Order ''American Indian Tribal Rights, Federal-Tribal Trust Responsibility and the Endangered Species Act'' dated June 5, 1994 (Defining the government-to-government relationship to require, among other things, that both Departments consult with, and seek the participation of, affected Tribes to the maximum extent practicable in any action under the Endangered Species Act.) The commenter is not correct in believing that adding these references to the extraordinary circumstances factors changes the level of required environmental analysis. The underlying factors are to be considered along with the potential for significant impacts in determining whether a proposed action that normally qualifies for categorical exclusion warrants an EA or EIS. The standards for delegation to Tribes on a case-by-case basis under the Clean Air and Water Acts provide the assurance desired by the commenter for subparagraphs g and h. With respect to the remaining subparagraphs, we see no legal basis for presuming that Tribal concerns and laws are any less valid than their State and local counterparts.

Regarding the removal from the characteristics for extraordinary circumstances those actions that are like to be highly controversial with respect to the availability of adequate relocation housing (paragraph 304), one commenter supported the deletion. However, another commenter opposed the deletion citing that few such cases do not provide sufficient justification. FAA's response: In FAA's experience, this circumstance is accompanied by other extraordinary circumstances, such as those in paragraphs 304d and k. Therefore, the provision in 1050.1D is, as proposed, deleted in the final 1050.1E.

A commenter notes that the list of impact categories in paragraph 304 and their relationship to extraordinary circumstances is complete and useful. Paragraph 304i (controversy) has been somewhat clarified but still remains imprecise. Suggest adding to the second sentence ''* * * when there is merit for such concern with respect to the potential environmental impacts of the project under consideration.'' FAA's response: Both in response to this comment and to the suggestion of the First Circuit Court of Appeals stated in *Save Our Heritage* v. *FAA,* 269 F.3d 49, 61 (1st Cir. 2001), the FAA has defined ''controversial'' and ''highly controversial'' more precisely to reflect applicable case law. Language similar to that proposed by the commenter has been added to clarify that the effects of a project are considered highly controversial when a reasonable disagreement exists over the project's risks of causing environmental harm. FAA environmental specialists should consider opposition by federal, state, or local agencies, Native American Tribes, and a substantial number of those affected by the action in determining whether or not a reasonable disagreement exists about a project's risks of causing harm. Opposition to an action, the effect of which is relatively undisputed, does not qualify as an extraordinary circumstance.

A commenter notes that paragraph 304f provides for an exception to the CATEX rule where there are extraordinary circumstances which are ''likely to have a significant impact on noise levels or noise sensitive areas.'' However, the description of noise sensitive areas in paragraph 11 seems only to refer to areas within the DNL 65 noise contour. If this is correct, then the exception would not apply to the Special Use Airspace situation, at least where there are no 65 DNL noise contours developed or noise contour studies for that airspace. FAA's response: Noise sensitive areas are not restricted to the DNL 65 dB contour. Guidance on noise sensitive areas is in Appendix A and has been expanded to include circumstances beyond the usual community noise assessment.

A commenter notes that paragraph 304 states that actions, normally CATEXed, would be subject to an EA, or if significant impacts are anticipated, an EIS; however, paragraphs 304a-h all contain the word ''significant,'' meaning that in every case an EIS would have to be prepared. Suggest ''significant'' be deleted in these sections. FAA's response: In response to this comment and DOI comments, the FAA has modified paragraph 304 in the final Order to remove the word ''significant,'' clarify how potential effects are weighed in determining whether there are extraordinary circumstances that warrant an EA or EIS, and to clarify that either an EA or EIS may be prepared. Paragraph 304 contemplated the use of the criteria of potential significance as an initial step and the use of screening tools and actual data (''if potential impacts are significant'') to determine whether an EIS was required rather than an EA. For example, the FAA has a screening tool known as the area equivalent method for determining whether a proposal is likely to cause a 1.5 DNL dB or greater increase in the 65 DNL dB contour. Although the FAA does not agree that paragraph 304 had the effect of requiring an EIS, based on extraordinary circumstances, for every action that is normally CATEXed, we have revised the paragraph in an abundance of caution to minimize the potential for confusion.

Beginning Paragraph 305 Comments. The DOI comments that if documentation is optional, how will potentially affected parties know if and how the FAA has considered their interests in making its determinations. We believe that some level of documentation is warranted in all but the most benign cases. *FAA's response:* Some level of documentation is prepared in most cases. Paragraph 305 refers to preparation of documents for the administrative record beyond those generated in the normal course of business. Like other federal agencies, during the course of developing its own projects or approving federal actions requested by applicants to support their projects, the FAA typically documents the basis for its environmental determinations. As this is the case, the CEQ discourages documentation for categorical exclusions. As explained in its Guidance Regarding NEPA Regulations, (48 FR 34263, July 22, 1983), ''* * * the Council discourages procedures that would require the preparation of additional paperwork to document an activity that has been categorically excluded.''

The Illinois DOT comments that within all categories of actions that qualify for a CATEX, an action can sometimes require an EA or EIS if there are extraordinary circumstances. This paragraph notes that there may be occasions in which FAA even decides to assemble documentation to support a decision to proceed with a CATEX. However it does not describe any procedures for public notice of CATEX determinations. Without some method to announce decisions about CATEX's (including monthly mailings, newspaper announcements, posting of Web sites, etc.), there is no way for anyone outside FAA to raise the concern that perhaps an extraordinary circumstance exists for which FAA is not aware. Some of the items on the list of CATEX's that are just the sort of things for which an outsider's perspective may be needed to determine whether extraordinary circumstances exist. Specifically, the issuance of the National Plan for Integrated Airport Systems, which presumably includes additions and deletions from the NPIAS, the issuance of advisory circulars (such

as the recent advisory on location of runways near hazardous wildlife) and the establishment of new or revised air traffic control procedures over 3,000 feet AGL are all actions for which FAA may be unable to predict the impacts of its decisions. There should be some procedure for publication in either electronic or print format of proposed decisions to issue CATEX's for these actions so that interested citizens can comment on the determination that no extraordinary circumstances exist. FAA's response: CEQ regulations do not require documentation or public notice for CATEX's. CATEX's have been created to alleviate the administrative burden on Federal agencies. The suggested procedure for each and every action subject to a CATEX would be contrary to the intent of NEPA (see 40 CFR 1500.4(p); 1500.5(k) and 1508.4). For example, the NPIAS is a planning document. The FAA issues advisory circulars provide guidelines and approved means of compliance with standards for airport design and operation. Neither is the type of action that normally has the potential to significantly impact the environment. As explained in detail above, under Issues of Special Interest, Noise, the FAA conducted a special study to determine whether the establishment of new or revised air traffic control procedures over 3,000 feet AGL normally has the potential to significantly impact the environment. This study is available in the FAA Docket. We see no basis for the statement that the NPIAS, advisory circulars, and the categorical exclusion for air traffic control procedures over 3,000 feet AGL ''all are actions for which the FAA may be unable to predict the impacts of its decisions.'' None of these actions normally have possible effects that are highly uncertain or involve unique or unknown risks. The FAA has a screening tool for determining whether air traffic control procedures over 3,000 feet AGL are likely to result in DNL 5 dB or greater increases in noise in residential areas subject to noise levels between DNL 60 DB to DNL 45 dB. Based on FAA's experience, such increases are an indicator of potential adverse community reaction. This tool aids the FAA in making an informed judgment about the existence of extraordinary circumstances.

A commenter cautions the FAA to avoid undercutting the benefit of CATEX's by creating added procedures and circumstances that require subjective determinations by FAA staff without sufficient guidance. The extraordinary circumstances listed in 304 already contain a fair degree of subjectivity. Overlaying additional subjective determinations about whether documentation is required, and, if so, what type, will not benefit the process. Reviewers should not be encouraged to exercise subjective considerations in finding the existence of extraordinary circumstances or in determining whether documentation is necessary. Otherwise, unnecessary delays or EA's will be required. Additional guidance on when the documentation is required for extraordinary circumstances and what type should be included in the revised order. FAA's response: Documentation of CATEX's is optional. When documentation is prepared in addition to that generated in the normal course of business, it is based on the judgment of the responsible FAA official. Since documentation of CATEX's is on a case-by-case basis, and does not impact good faith, objective compliance with NEPA, it is neither feasible nor necessary to develop standardized guidance.

A commenter believes that this appears to be a major departure from past FAA policy. Is it correct to infer that no written record supporting the determination of CATEX's (including review of extraordinary circumstances) is required? In the absence of explicit requirements for determining ''no controversy,'' this appears to invite abuse of the CATEX process. FAA's response: As discussed above in response to the DOI comment, paragraph 305 is consistent with CEQ guidance. Paragraph 305 states FAA policy and practice.

A commenter believes that although paragraph 305 states that a CATEX determination ''shall not be considered deficient if it is not supported by documentation,'' paragraph 306 states that the ''FAA official must assure * * * that compliance * * * is reflected in the determination to apply a CATEX.'' Paragraph 306 further states that ''such compliance * * * should be documented.'' These paragraphs present a side-by-side contradiction. The entire decisionmaking process should be documented, including the CATEX. Paragraph 305 might be revised to state that minimal documentation of the CATEX determination be prepared. FAA's response: Paragraph 306 has been revised to more clearly indicate that ''compliance * * * should be documented'' refers to laws and regulations in addition to NEPA—not to NEPA.

Beginning General Categorical Exclusion Comments. The DOI comments that, as written, the CATEX's are so broadly worded that most actions could be interpreted to fall within a CATEX. This is partially offset by the list of extraordinary circumstances, except that many of those use the word ''significant,'' which predetermines the NEPA decision and allows the use of the CATEX in all but the most severe cases. NPS is concerned that under this wording, most of the airport issues on which NPS has worked with FAA in recent years may be CATEXed under the proposed wording. DOI believes that such exclusion would be improper. FAA's response: The CATEX's are consistent with CEQ regulations. We are uncertain about the ''airport issues'' to which NPS refers, but major airport actions having the potential to affect NPS resources (*i.e.*, runway or major runway construction, new airports) are not listed as CATEX's, so FAA cannot CATEX them. For these, FAA requires an EA or EIS. See response to comment regarding ''Extraordinary Circumstances'' Under ''Comments on General Subject Matter'' above.

Three commenters submitted identical comments to the effect that the proposed order contains numerous CATEX's that are overly broad, vague and improperly discretionary. Examples of these are CATEX's which are expressed in terms of ''substantial'' increase or ''significant'' increase in environmental impacts. The commenters believe these revised CATEX's fail to contain any adequate standards for determining the extent of the exclusion. Rather, the language is unacceptably vague and provides improperly broad discretion to FAA managers to classify actions as CATEX's which do not warrant it. The adoption of improper CATEX's will undermine the long term planning process, eliminate public participation and comment which is the goal of NEPA, and must ultimately be adjudged arbitrary and capricious in their present form. FAA's response: As to use of the word ''significant,'' see the Response to Comments on General Subject Matter, Extraordinary Circumstances. The CATEX's in question are existing CATEX's that the FAA promulgated in earlier versions of Order 1050.1. The FAA has more than two decades of experience with the CATEX's in question and has far more experience with the actions identified in those CATEX's. The FAA believes that, given the nature of the actions involved, and the FAA's judgment that has evolved through years of experience with the actions, the public interest is well served by these existing CATEX's. The FAA would much rather see the efforts

of the project team directed to examining the real environmental issues listed extraordinary circumstances (paragraph 304) rather than focusing attention on whether the proposed action triggers an arbitrary (but qualitative) significance criterion or limitation built into the CATEX.

Two commenters asked that a cumulative impact analysis be made on each and every CATEX and until this procedure is completed for public comment as stipulated under NEPA, all CATEX's be deleted from the final order. FAA's response: The FAA establishes CATEX's as provided for in CEQ regulations and has thoroughly reviewed its CATEX guidance and list with CEQ.

A commenter believes that airports historically tend to undertake many smaller insignificant projects such as runway, taxiway, apron, and ramp improvements and extensions claiming CATEX's in order to circumvent NEPA compliance. Taken together they more often than not result in significant cumulative environmental impacts. That is true also of accessory on-site structures, construction of facilities, buildings, parking areas, etc. The commenter contends that AIP grants are currently being used at the local airport (Reno, NV) for an ongoing series of these types of projects without environmental analysis, while significant cumulative impacts have been realized—most critically, noise. Said airport prepared three separate EA's in three consecutive years for the implicit purpose of avoiding a full-blown EIS. The commenter contends that this loophole is consistently used by airports and the FAA to circumvent public participation in quality of life issues. FAA's response: Order 1050.1E includes guidance on the consideration of cumulative impacts, as well as on independent utility of projects and segmentation. Projects that have independent utility may be categorically excluded or evaluated in separate NEPA documents provided that reasonably foreseeable cumulative impacts are properly assessed and disclosed. Also, in determining if extraordinary circumstances apply to a project, FAA must often contact or consult the public to complete the regulatory process associated with the resource that is the focus of a potential extraordinary circumstance (*i.e.*, historic property).

A commenter believes that the CATEX list is inadequate and incomplete. Unless the CATEX's currently contained in the appendices are incorporated into Chapter 3 in their entirety, this effort to streamline will only result in added confusion, uncertainty and controversy among FAA officials and the private parties impacted by the order. FAA's response: All relevant and applicable CATEX's from Chapter 3 of Order 1050.1D, Appendixes 1–6 of Order 1050.1D and Chapter 3 of Order 5050.4A have been included in Chapter 3 of final Order 1050.1E.

One commenter believes the proposed order's CATEX's would simplify the approval of many projects that are currently closely scrutinized, shifting more of the burden to the communities surrounding airports, instead of enacting more stringent measures to mitigate (maintain or even decrease) the level of aviation impact on these communities. The commenter believes this is not an equitable proposal, therefore, it needs to be rethought, amended to achieve a fair balance, and then resubmitted. FAA's response: Federal agencies are allowed under CEQ regulations to identify actions that do not normally have potentially significant impacts and place them in a CATEX category. The FAA has thoroughly examined the basis for the five new categories of actions related to airports. The FAA believes that the environmental review of proposed actions that are legitimate CATEX's should be simplified. This is one of FAA's environmental streamlining goals.

A commenter noted that a recurrent theme in the proposed order is that CATEX's will be granted, provided they: ''do not significantly increase noise,'' ''do not substantially expand those facilities,'' ''do not essentially change existing tracks,'' ''do not have a significant effect on the human environment,'' etc. However, there is no definition as to what constitutes a ''significant,'' or ''essential'' etc. change. As currently structured, many elements of the proposed order are inadequately defined, therefore, prone to misinterpretation in the absence of clear quantitative thresholds. FAA's response: As to use of the word ''significant,'' see the Response to Comments on General Subject Matter, Extraordinary Circumstances. The CATEX's in question are existing CATEX's that the FAA promulgated in earlier versions of Order 1050.1. The FAA has more than two decades of experience with the CATEX's in question and has far more experience with the actions identified in those CATEX's. The FAA believes that, given the nature of the actions involved, and the FAA's judgment that has evolved through years of experience with the actions, the public interest is well served by these existing CATEX's. The FAA would much rather see the efforts of the project team directed to examining the real environmental issues listed extraordinary circumstances (paragraph 304) rather than focusing attention on whether the proposed action triggers an arbitrary (but qualitative) significance criterion or limitation built into the CATEX.

The commenter recommended that a new figure number be given to each subcategory of CATEX in proposed Figure 3–2 (*e.g.*, 3–2, 3–3, 3–4, etc.).

That way, each CATEX can be identified by a specific number reference. As it is now, number references such as #4 could be referring to CATEX's in other subcategories. FAA's response: We concur. Figure 3–2 was replaced in the final Order with paragraphs 307–312 in order to simplify the citation of a particular categorical exclusion, present the lists in a logical manner, and identify each categorical exclusion with a unique reference.

Beginning Paragraph 307 Comments. Regarding the CATEX of 307a, a commenter suggested changing ''emergency measures'' to ''measures to respond to emergency situations'' in order to clearly state the intent of the CATEX. FAA's response: We concur and have amended the CATEX accordingly in the final Order. The similar CATEX under paragraph 311j was also amended in the final Order to incorporate the commenter's suggestion. Further, a condition was added to restrict the applicability of the CATEX to instances where there are no reasonably foreseeable long-term adverse effects. This restriction was added in consideration of the requirements of 40 CFR 1506.11 and paragraph 302 of this Order which provide alternative NEPA compliance procedures for actions taken to respond to emergency situations that significantly affect the environment.

Regarding the CATEX of paragraph 307c, a commenter concluded that any conveyance of land for airport purposes is almost by definition of environmental concern and should NOT be CATEXed. FAA's response: This CATEX applies to the conveyance of land simply to transfer ownership where there is no reasonably foreseeable change in use that has the potential to significantly impact the environment. The CATEX has been revised to clarify that its use is limited to circumstances where the proposed use of the land is either unchanged or for a use that is CATEXed. As revised, the CATEX of paragraph 307c is within the scope of the existing CATEX in Airport Environmental Handbook, FAA Order 5050.4A, paragraph 34a.

Regarding the CATEX of paragraph 307c, a commenter disagrees with this CATEX. The commenter contends that there is an AIP project currently, where residential property was acquired under the guise of noise, then conveyed to Regional Transportation to construct a major arterial roadway to benefit the airport. An Air Cargo Complex dependent on the roadway to carry significant truck traffic was an unmentioned part of the project. The commenter believes that granting CATEX's rather than preparing environmental analysis deprives the public opportunity to defend their quality of life. FAA's response: In use and development of CATEX's, FAA follows procedures set forth in 40 CFR 1508.4 and 1507.3. The Responsible FAA official must determine if extraordinary circumstances exist prior to applying a CATEX and these determinations often involve public input. We are unable to determine the relevance of the scenario described by the commenter as it appears to involve the conveyance of airport land and a release from federal obligations under 307b, not a conveyance of Federally-owned land. The nature of the AIP project is not clear. Nor is it clear whether the use of the land for a roadway project was reasonably foreseeable when the airport sponsor requested the release. It is also not clear whether federal action was involved in construction of the roadway project by ''Regional Transportation.''

The DOI believes that the CATEX of paragraph 307c needs a qualifier that excepts airports in or near national park units from the CATEX. The DOI also recommends adding the word ''existing'' to read ''* * * operating environment of the existing airport.'' Land conveyances for new airports should not be CATEXed. FAA's response: This CATEX has been revised to clarify limitations on its availability, as described above. It was not intended to apply to the conveyance of land on which to build an entire new airport or to a conveyance of land on which to build airport development that is not also normally subject to categorical exclusion. As qualified, the conveyance of land alone has no impact on the environment regardless of the location of an airport.

Regarding the CATEX's of paragraphs 307e and c, a commenter supports the inclusion of NOTAMS and FAA actions relating to conveyance of land that do not substantially change the operating environment. FAA's response: Comment noted.

Regarding the paragraph of 307d, the CATEX was revised in the final Order 1050.1E to make clear that the CATEX addresses Federal funding and FAA's approval to amend the airport layout plan to depict Part 150 noise compatibility projects.

Regarding the CATEX of paragraph 307f, a commenter concluded that the appropriateness of excluding mandatory actions required under treaties from NEPA analysis is questionable. CATEX's are for actions that normally do not result in significant impacts, based on the inherent characteristics of the action. An action that is mandatory under a treaty may well result in significant environmental impacts. The mandatory nature of the action relates to the discretion of the FAA in implementing the action, not the resulting environmental impacts. Even if implementation of the action is mandatory, there may be opportunity to reduce impacts on the environment through proper timing or staging of the action or use of other mitigation measures identified by a NEPA analysis. Another commenter believes that treaties with international organizations, governments and/or authorities must not overrule U.S. law that is designed to protect the health, safety and environment of its citizens. Other international entities could be more concerned about commerce, over human health and our environment. FAA's response: The FAA believes that the phrase at the end of the categorical exclusion, ''except when the United States has discretion over implementation of such requirements'' addresses the concern raised by the commenter. ''Mandatory action'' refers to circumstances in which the federal agency has no choice about whether or how to accomplish the action, including timing, staging or mitigating impacts during implementation. The NEPA requires Federal agencies to take environmental concerns into consideration when making decisions over actions that are potentially subject to Federal control and responsibility. See 40 CFR 1508.18. Conversely, the federal courts have recognized that where no choice is involved such that an action is ministerial, no NEPA analysis is required. No purpose would be served in completing such analysis where the Federal agency has no discretion to take environmental impacts into account in implementing the action. See, *City of New York* v. *Slater*, 262 F.3d 169 (2nd Cir. 2001). For example, the 1995 bilateral agreement phasing in an ''Open Transborder'' regime between the U.S. and Canada required the FAA to allocate slots to Canadian carriers under the slot program for Chicago O'Hare International Airport (14 CFR part 93, subpart K). During the rulemaking to amend the slot program at O'Hare Airport the FAA realized that mandatory actions taken by the State Department pursuant to treaties or international agreements qualify for exemption from NEPA under State Department regulations implementing the NEPA, 22 CFR part 161. This categorical exclusion is intended to afford the same treatment to such actions when taken by the FAA. This categorical exclusion stems from the NEPA, not from application of the international treaty or agreement to override U.S. law. As a result of the Wendell H. Ford Aviation Investment Reform Act of 2000, there should be fewer occasions to use this categorical exclusion. Reagan National Airport is now the only airport left in the high density traffic airport program.

The FAA amended the CATEX of paragraph 307h to include the indicated text: ''Approval of an airport sponsor's request solely to impose Passenger Facility Charges (PFC) *or approval to impose and use Passenger Facility Charges for planning studies*''. Federal funding of a planning study, including those studies necessary to comply with NEPA, whether under the airports grants program or the state block grants program (see CATEX paragraph 307o), or under the PFC program, does not imply Federal commitment to execution of the project or action under study. FAA approval of such projects or actions is independent of the planning study approval. Concerning the PFC program, since, for the purposes of compliance with NEPA, approval to impose and use PFC's for planning purposes is functionally equivalent to similar approvals for planning studies under the airport grants program or the state block grants program, and since a CATEX has been found to be appropriate for planning studies under the airport grants program and the state block grants program, it may be concluded that the planning studies approved under the PFC program can be similarly CATEX'ed from further NEPA review. In fact, funds are often co-mingled for such studies leading to the conclusion that the source of funding is irrelevant to NEPA compliance issues. It is further concluded that the issue is better addressed by amending the CATEX under paragraph 307h rather than amending paragraph 307o. Accordingly, the text at issue is adopted under paragraph 307h in the final Order 1050.1E.

Concerning the CATEX in paragraph 307o, the Illinois DOT commented that

within the AIP, certain states, including Illinois, are allowed to administer the federal program under the State Block Grant Program. Each state has a separate block grant agreement with the FAA that identifies the state's role and responsibilities. Each year IDOT receives a single grant (or multiple grants) for the program based on an application that includes a list of airport development projects. The commenter notes that the FAA uses a CATEX on the issuance of the state block grant, which excludes the need for NEPA review of projects contained in the block grant. In practical terms this means that IDOT is required to produce and approve the environmental documents that FAA would have approved if there were no state block grant. The Illinois DOT consults with FAA but does not act on its behalf. The commenter states that the proposed order does not make any reference to the peculiarities of the procedures to carry out NEPA under the special state/FAA relationship for block grant states. Additionally, FAA's NEPA oversight after the block grant is issued is not spelled out in the proposed order. The FAA cannot delegate NEPA to a state so the state cannot act in FAA's name. Environmental action approvals prepared by a block grant state are signed only after intense scrutiny by FAA, but they are the state's own decisions. The scrutiny has reached a point where the state cannot sign the approval unless FAA agrees. While Illinois DOT has successfully worked with FAA to implement the State Block Grant Program for some years, it urges that this ''gray area'' of interagency operation be clarified in the new order. The Illinois DOT recommends that it address any special procedural actions used for the block grants, especially since this order is intended to reflect numerous changes since the last update in the 1980's. FAA's response: This order incorporates categorical exclusions for the FAA's airport improvement program, however the detailed environmental policies and procedures for administration of the airport program will remain in its separate order, FAA Order 5050.4, the Airport Environmental Handbook. The FAA Office of Airports, in updating Order 5050.4, intends to include more detailed information on the State Block Grant Program that will address your concerns. Order 5050.4B will be consistent with Order 1050.1E, but will include more detailed guidance specific to airport environmental reviews.

The FAA found that the proposed CATEX of paragraph 307o did not carry forward the condition ''which do not imply a project commitment'' for those planning grants as originally provided in the existing CATEX under Order 1050.1D, Chapter 3, paragraph 31a(3). Proposed paragraph 307o, which was a combination of existing CATEX's under 1050.1D and Order 5050.4a, could be misinterpreted to imply that the original intent of the existing CATEX's was not carried forward into Order 1050.1E. Accordingly, the final Order 1050.1E adopts the original CATEX from Order 1050.1D and adds to paragraph 307o the existing CATEX from Order 5050.4a as a ''such as'' provision of paragraph 307o. Thus, as intended, the original intent of the existing CATEX's are carried forward in the final Order 1050.1E.

Beginning Paragraph 308 Comments. Regarding the CATEX of paragraph 308c, a commenter strongly recommended that issuances of certificates and related actions under the Airport Certification Program be eliminated from CATEX's. The commenter reported a situation of an air carrier, Shuttle America, being certified without an environmental review—a major change and disruption to the community. FAA's response: The commenter has confused airport certification for safety with the issuance of aircraft operations specifications. The foregoing are distinctly separate and independent programs within the FAA. FAA believes the CATEX for the Airport Certification Program is appropriate. It is not a newly-proposed CATEX; it has been in existence for years. Regarding the issuance of air carrier certificates and operating specifications, as noted in response to paragraph 307 comments, the FAA as a matter of policy applies NEPA to FAA approval of air carrier operations specifications and amendments to specifications. The comment overlooks the environmental review that the FAA conducted in deciding to approve Shuttle America's application to initiate service at, and increase service from Hansom Field to other airports. See, *Save Our Heritage* v. *FAA*, 269 F.3d 49 (1st Cir. 2001). The court in that case upheld the FAA's reasoned determination of *de minimis* environmental effects from ten or so flights a day, against a backdrop of nearly 100,000 flights a year. Given the FAA's policy of reviewing the proposed FAA actions that most directly authorize air carriers to change service at airports, the normal categorical exclusion of other ministerial, safety-based related FAA actions is justified. Airports are certificated to serve air carriers based upon safety standards and requirements such as crash, fire, and rescue equipment and security programs in 14 CFR part 139. Although airport and air carrier certification are prerequisites, it is not normally clear that new air carrier service will result. Although not required, as a matter of policy the FAA has proposed to replace the statement that the categorical exclusion for airport certification is not subject to review for extraordinary circumstances with the statement that there is no reasonable expectation of a change in use that would cause environmental impacts. See paragraph 303d. This final Order has been revised further to affirmatively state in paragraph 308 that the categorical exclusion for airport certification is subject to review for extraordinary circumstances.

Regarding the CATEX of paragraph 308c, a commenter noted that in September 1999, Massport issued a certificate for commercial flights to Shuttle America, using Hanscom Field. Massport had promised repeatedly, in writing, since 1978 that Hanscom Field would remain a GA airport. Massport took this action with no review by the Advisory Board that had been chartered by the State to review Hanscom changes. Massport is being sued by the surrounding towns for this action. A CATEX for Issuance of Certificates gives an airport owner inappropriate control of the destiny of a very large area, again, for the financial benefit of a very small number of people (in this case, a group of investors in Shuttle America). FAA's response: This categorical exclusion would apply to certificates issued by the FAA under federal law, not certificates issued by Massport as proprietor of the airport under state law.

Regarding the CATEX of paragraph 308d, a commenter believes that the CATEX restricts and limits the current exclusion provided in Appendix 4, paragraph 3e in 1050.1D which clearly provides that preparation of an EA is normally required for ''Approval of operations specifications authorizing an operator to use turbojet airplanes for scheduled passenger service into an airport when that airport has not previously been serviced by any scheduled passenger turbojet airplanes.'' FAA's response: Although it is correct that an EA is normally required for scheduled turbojet passenger service into an airport when that airport has not been previously been serviced by any scheduled passenger turbojet airplanes, Order 1050.1D, Appendix 4, paragraph 3e does not preclude the possibility of an EA being required when an airport already had scheduled passenger turbojet airplanes. Further, the commenter is incorrect in the

assumption that the situation identified in his comment is a ''restriction'' on the applicability of the CATEX in question. In Order 1050.1D, the appendixes provide separate paragraphs for those actions which normally require an EA and those actions that are normally CATEXed. In Order 1050.1E, the provisions of the appendixes of Order 1050.1D were separated. Those actions which normally require an EA are now consolidated and listed under paragraph 401 in final Order 1050.1E. The specific action identified by the commenter is now listed as paragraph 401(l). CATEX's from Order 1050.1D (along with those from Order 5050.4A) are consolidated and are now listed in Chapter 3 of Order 1050.1E. The provisions of Appendix 4 of Order 1050.1D are, with minor editorial changes, carried forward unchanged into final Order 1050.1E as previously described.

Regarding the CATEX of paragraph 308d, three commenters believe the CATEX fails to define what is meant by the term ''substantially'' or ''operating environment of the airport.'' Thus, it is impossible to ascertain to what activities the proposed CATEX would pertain, and the proposed CATEX is thereby rendered vague and ambiguous, implausible and unenforceable as arbitrary and capricious. FAA's response: This CATEX is an existing CATEX originally issued approximately in its present form in Order 1050.1B (June 16, 1977). The FAA is not proposing to alter the intent or scope of this existing CATEX in Order 1050.1E. The text string ''do not significantly change the operating environment of the airport'' means that the proposed change in the (aircraft operations) level of service or type of aircraft operation is minor and does not have the potential to significantly increase noise over noise sensitive areas or to result in other significant impacts. A sentence to this effect has been added to this CATEX in the final Order. See, *Sierra Club* v. *Dole*, 753 F.2d 120 (DC Cir. 1985), *Save Our Heritage* v. *FAA* 269 F.3d 49, 56 (1st Cir. 2001). See also paragraph 401(l) of Order 1050.1E which further delineates the meaning of the text string in question by including examples of operating specifications which may significantly change the operating environment of an airport and which, consequently, require the preparation of an EA. The issue of ''significance,'' and significance thresholds where available, are discussed for each environmental impact category in Appendix A of Order 1050.1E. For example, a significant increase in noise is defined as an increase of DNL 1.5 dB or more at or above DNL 65 dB noise exposure over a noise sensitive area (see section 14.3 of Appendix A).

Beginning Paragraph 309 Comments. Regarding the CATEX's of paragraphs 309b, c, d, and g, the DOI believes that these CATEX's need qualifiers that except airports in or near national park units. FAA's response: The extraordinary circumstances listed in paragraph 304 include provisions for section 4(f) lands, which include public parks (*e.g.*, National Parks) and recreational lands, wildlife and waterfowl refuges, and historic sites. However, geographic proximity alone, without resulting effects that trigger extraordinary circumstances, does not warrant preparation of an EA or EIS for actions that normally qualify for a CATEX.

Regarding the CATEX of paragraph 309a, the DOI recommends that after ''equipment,'' add the following: ''within the perimeter of an airport or launch facility, or in a location currently used for similar facilities or equipment.'' FAA's response: We concur and the recommendation, with a minor change, is adopted.

Regarding the CATEX of paragraph 309b, the DOI recommends that at the end, add the following: ''provided the action will not create light emissions or visual impacts visible outside of the airport from areas such as wilderness, national park system units, or similar light-sensitive areas near the airport.'' FAA's response: The FAA believes that national parks, wilderness areas, and other areas are adequately protected from the inappropriate use of a CATEX by the guidance governing extraordinary circumstances.

Regarding the CATEX of paragraph 309b, the DOI notes that there appears to be a conflict with paragraph 401j. Conflict would disappear if ''which are not on airport property'' were added to 401j. FAA's response: We concur. The recommendation was adopted and paragraph 401j has been modified accordingly in the final Order.

Regarding the CATEX's of paragraphs 309b and c, a commenter questions most of the provisions of this CATEX, believing any changes in major lighting systems, approach beacons, and navigational systems affect both the appearance of the airport and flight practices, and they should not be CATEXed. The commenter believes that building, strengthening, extending or resurfacing of existing runways and ramps can change the airport capacity to handle flights, and may open up the airport to additional operations. Likewise, construction of accessory structures such as storage buildings, garages or small parking areas affect future airport activities and its capacity, and they should not be CATEXed. FAA's response: The scenarios described by the commenter do not normally occur and would constitute an extraordinary circumstance for these CATEX's. These items remain CATEXed in Order 1050.1E, subject to extraordinary circumstances.

Regarding the CATEX of paragraph 309c, the FAA added a parenthetical note to indicate that the establishment or relocation of Instrument Landing Systems are not included in the CATEX. Also, text relating to upgrading facilities and equipment to improve operational efficiency, which was misplaced under paragraph 310s, was relocated to the end of the fourth sentence of paragraph 309c in the final Order.

Regarding the CATEX of paragraph 309d, a commenter noted that this CATEX does not appear to be in keeping with FAA practice. In recent years, the FAA has prepared EA's for many proposed radar facilities (*e.g.* terminal Doppler weather radars, airport surveillance radars, precision runway monitors, and next generation weather radars) located at or near airports. FAA's response: Paragraph 309d only applies to facilities and equipment that would be located on airports, or FAA or launch facilities. Contrary to the commenter's assertion, this CATEX is routinely used by the FAA if an analysis of extraordinary circumstances determines that significant impacts would not occur. As a current example of the FAA's routine use of this CATEX, FAA has identified the preferred sites for approximately 30 on-airport ASR–11 radar systems. Following an analysis of extraordinary circumstances, 23 of the 30 on-airport preferred sites qualify for this CATEX and CATEX's have been applied at these 23 locations. The FAA prepares EA/FONSI's when an analysis of extraordinary circumstances determines that potentially significant impacts may occur, or the facility or equipment would not be located on an airport or other FAA or launch facility. The commenter also noted that ANSI/IEEE use the word ''standards,'' not ''guidelines.'' FAA's response: We concur and the appropriate change was adopted.

Regarding the CATEX of paragraph 309d, two commenters support this CATEX. One commenter notes that the listed equipment has minimal environmental impact, and a CATEX provides a valuable tool for the timely installation of equipment such as the Precision Runway Monitor (PRM). The other commenter supports the inclusion

of approach lighting systems. FAA's response: Comments noted.

Regarding the CATEX's of paragraphs 309b, 309c and 309d, the FAA found that the qualifier ''within the perimeter of an airport'' needed to be better delineated. Accordingly, the text in question was replaced with ''on designated airport or FAA property or launch facility.'' In this context, ''on designated airport property'' means previously acquired real property used for, or intended to be used for, airport purposes as provided under 14 CFR Subchapter I, Airports, of the Federal Aviation Regulations. ''On FAA property'' means real property previously acquired by the FAA for purposes other than the proposed action. ''Launch facility'' means an existing facility as defined in paragraph 11 of Order 1050.1E.

Regarding the CATEX of paragraph 309e, the FAA added mobile Airport Traffic Control Towers and Mobile Emergency Radar Facilities to the examples of miscellaneous airports facilities and equipment that are included under the CATEX. These facilities are mobile and designed for temporary use in place of damaged or otherwise out of commission facilities already in use on an airport. A mobile Airport Traffic Control Tower may also be used as a temporary facility in support of an airshow at small airport lacking a permanent Airport Traffic Control Tower. These facilities are used in conjunction with other actions that are CATEXed (see paragraphs 307a, 311j and 312b). The indicated facilities are included in paragraph 309e in final order 1050.1E.

Beginning Paragraph 310 Comments. Regarding paragraphs 310e, f, g, h, and r, the DOI believes that these CATEX's need qualifiers that except airports in or near national park units. FAA's response: As previously noted, geographic proximity to a national park alone does not disqualify an action for CATEX. Sensitive environmental resources within or near an airport would be reviewed pursuant to Order 1050.1E to determine whether extraordinary circumstances, involving impacts on resources, require the preparation of an EA or EIS.

Regarding the CATEX of paragraph 310d, three commenters believe that this CATEX would immunize from environmental analysis FAA assistance to, planning for, and installation of de-icing facilities which purport to have obtained requisite water quality permits. The commenters believe that this totally begs the question of, among other impacts, the air quality effects of de-icing facilities. In other words, de-icing facilities using toxic chemicals ethylene and propylene glycol would be exempt from review because, arguably their water quality impacts had been resolved, leaving unresolved numerous additional potential impacts. The proposed order is devoid of evidence to support a CATEX where important environmental impacts are both probably present and unexplored. FAA's response: De-icing facilities have been reviewed and have not been found to produce the significant impacts the commenter is concerned about. Our review of the literature on glycol-based deicing fluids indicates glycol atomizes and mixes with air in the immediate and adjacent vicinities of the aircraft being treated with these fluids. The resulting dilution protects workers beyond the immediate area where the deicing occurs. As a result, a person beyond an airport's airside operations is highly unlikely to be exposed to airborne glycol concentrations causing harm to one's health. Water quality impacts are the known circumstance that could extraordinarily preclude a CATEX. However, other extraordinary circumstances would also be reviewed by the FAA responsible official.

Regarding the CATEX of paragraph 310d, a commenter asks for justification for the addition of installation of deicing and anti-icing facilities with NPDES permits or similar permits. The commenters question whether this is a new policy. Another commenter noted that the proposed change must not CATEX federal assistance, ALP approval, or FAA installation of deicing/anti-icing facilities just because they comply with NPDES since many state permits are of minimum quality. FAA's response: The CATEX is based on the determination that de-icing/anti-icing facilities meeting NPDES permit requirements would not significantly impact water quality—the primary impact of concern. State water quality agencies specify the volumes of de-icing agents that an airport may discharge to receiving waters based on the receiving water's ability to decompose, biologically and chemically, the de-icing agents. Consequently, concentrations of dissolved oxygen and de-icing agent components in receiving waters remain at levels that are not harmful to aquatic life.

Regarding the CATEX of paragraphs 310f and h, a commenter suggests that the terms ''limited'' and ''small'' be defined or examples of excluded projects included in final guidance materials. Several other commenters requests that the terms ''substantially'' and ''limited expansion'' be defined so that the potential to lead to expanded operations would not be ignored. For example, would adding 10 airline gates when there are already 120 gates ''substantially expand'' the airport? Does FAA have a ''rule of thumb'' that applies to interpret ''substantially expand'' in the context of passenger gates and cargo warehouses? FAA's response: The responsible FAA official determines ''substantially'' on a case-by-case basis in conjunction with a thorough examination of extraordinary circumstances. The Office of Airports (ARP) approves construction or expansion of passenger handling and cargo handling facilities. It finances only the public use areas of passenger handling facilities. As written, categorical exclusion 307h would apply only to passenger or cargo construction or expansion having no potential to significantly affect air quality, noise, or other environmental impacts. As a result, minor passenger or cargo facility construction or expansion would not normally cause significant environmental impacts. However, FAA recognizes small changes in these facilities could cause significant environmental changes. For example, they could adversely affect an endangered species. As a result, FAA's categorical exclusion analysis requires that the responsible FAA official conduct compulsory reviews of extraordinary circumstances. This ensures no minor expansion causes significant environmental effects. If such effects would occur, FAA will not categorically exclude any passenger or cargo handling facility causing those effects. As a result, the proposed categorical exclusion revision would meet CEQ's categorical exclusion definition because it would not normally cause significant environmental impacts. **Note:** ''Substantial expansion'' means actions increasing the numbers of passengers, vehicular traffic, or aircraft operations to levels that can cause changes in air quality or noise requiring further analyses. For air quality impact screening, refer to pg. 20 of the FAA and U.S. Air Force's ''Air Quality Procedures for Civilian Airports and Air Force Bases,'' (April 1997). For noise impact screening, refer to pg. 30, of FAA Order 5050.4A, ''Airports Environmental Handbook,'' para. 47e(1)(c)2. Whether or not expansion falls within a limited or substantial classification relates to the change in both size and service capabilities at specific locations. These items have been subject to CATEX's for years, and the appropriate application of extraordinary circumstances combined

with technical judgments have identified those expansions that need to be reviewed with an EA or EIS. The FAA understands the interest in more detailed, rule-of-thumb guidance and will provide it in FAA Order 5050.4B, the Airport Environmental Handbook. Order 5050.4B will be consistent with Order 1050.1E, but will deal more specifically with the environmental review of airport development.

Regarding the CATEX of paragraph 310h, a commenter objects to this CATEX. The commenter states that any construction of terminal facilities, passenger handling facilities, cargo buildings at commercial service airports have potential vehicular traffic impacts, and by attracting more customers, impact on frequency of commercial services. The commenter regards such changes to be of critical environmental significance, and they should not be CATEXed. The commenter further regards construction of terminal facilities as a sign of airport expansion. FAA's response: The FAA disagrees with the commenter's assumption that the construction of airport buildings necessarily attracts more air passengers. With respect to the commenter's concern that terminal expansion is a sign of airport expansion, the CATEX is worded to exclude substantial expansion. This categorical exclusion would not apply where construction of facilities is connected to other expansion activities, such as additional runways or new air carrier service. In addition, extraordinary circumstances would trigger an EA or EIS, instead of a CATEX, if changes of critical environmental significance were related to a specific terminal expansion proposal. Further regarding this CATEX, the FAA has determined that the scope of this CATEX includes ''T-hangers'' used for storage/parking of small general aviation aircraft. This determination is based on EA's conducted for such facilities and consequent findings of no significant impact.

Regarding the CATEX of paragraph 310k, a commenter suggests a clarification, as there may be a number of cases where a USACOE Nationwide Permit would be appropriate for minor projects in wetland areas that would not require an EA or EIS. Suggest adding this sentence at the end: ''When the land is delineated as a wetland, FAA will consult with the U.S. Corps of Engineers (Corps) to determine the required environmental documentation to meet the standards of the Corp; if an EA or EIS is not required, FAA will use this CATEX unless other environmental considerations require an EA or EIS.'' FAA's response: The FAA concurs and has added a sentence to the effect that minor dredging and filling of wetlands may qualify under this CATEX if the action qualifies for a U.S. Army Corps of Engineers nationwide or regional general permit. The features of interest to the commenter are essentially built into the CATEX and extraordinary circumstances. Further, consultation procedures are explicitly addressed in Appendix A, section 18 on wetlands.

Regarding the CATEX of paragraph 310m, the FAA concluded that the length of the lease for space in buildings and towers was not a determining factor in predicting the potential for environmental impact. Accordingly, the qualifying text ''for a firm-term of one year or less'' was deleted from the CATEX in the final Order. The qualifying text was originally included since at that time the FAA only had authority to execute leases for a maximum of one year. A lease of any duration that may have an impact on the environment would be captured under the extraordinary circumstances analysis process.

Regarding the CATEX of paragraph 310p, the CATEX adopted in the final order was amended by adding restrictions on the application of the CATEX that reflect concerns about invasive species, landscape practices that are environmentally damaging and unsustainable, and attractants to wildlife that are hazardous to aviation as follows: ''New gardening or landscaping, and maintenance of existing landscaping that do not cause or promote the introduction or spread of invasive species that would harm the native ecosystem, use landscape practices that reflect the recommendations in the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837), and do not attract wildlife that is hazardous to aviation.'' The restriction on invasive species was added to ensure the application of the CATEX is consistent with E.O. 13112, ''Invasive Species.'' The restriction for wildlife hazardous to aviation was added to ensure that such issues are substantively addressed if present. Also, the CATEX was amended in the final Order to add the consideration of landscape practices that reflect the recommendations in the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837). The Presidential Memorandum is a guidance document developed to assist federal agencies in the application of environmentally and economically beneficial landscape practices. The intent is to use landscape practices that can result in healthier, longer-lived plantings which rely less on pesticides and fertilizers, minimize water use, require less maintenance, and increase erosion control. The guidance is fairly general in nature and limited by the parameter of cost-effectiveness and discretionary site-specific considerations. It does not advocate replacement of existing landscapes, unless it is cost-effective to do so. The guidance does not supersede Federal agency directives, policy, or other guidance relating to the mission of the agency or to health and safety concerns.

Regarding the CATEX of paragraph 310r, a commenter objects to this CATEX. The commenter believes that the purchase of 3 or less acres of land adjacent to an airport changes the potential of the airport to handle traffic, is of significance to the neighbors of the airport, and should not be CATEXed. The purchase of 3 acres can represent a large amount of land in urban and suburban communities. FAA's response: The CATEX in question involves small tracts of land and associated easements and rights-of-way. Land purchased for significant airport expansion is not CATEXed.

Regarding the CATEX of paragraph 310r, a commenter asked if the easements and rights-of-way mentioned are those that may be required or those previously existing, or both. FAA's response: Generally, the CATEX applies to new easements and rights-of-way; however, on occasion it may apply to those previously existing.

Regarding the CATEX of paragraph 310r, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. FAA's response: The FAA's experience is that acquisition of small tracts of land and associated easements and rights-of-way do not individually or cumulatively cause significant impacts. The acquisition of land does not precipitate any change in the status quo. By merely accepting title the FAA is not undertaking a project that changes the character or function of the land. The use of the land for the proposed new facility would require an EA or EIS. For example, the acquisition of land and associated restrictive easements for Airport Surveillance Radar facilities will maintain the type of land use and the status quo of the airspace. The restrictive easement will prevent the development of the land and avoid physical impacts to the environment. This is not the type of change that normally effects the environment.

However, if such were the case in any particular instance, extraordinary circumstances would trigger either an EA or EIS.

Regarding the CATEX of paragraph 310t, a commenter objects to this CATEX. The commenter contends that commencing or adding to heliport operations changes the nature of air traffic at the airport. Sometimes, standard DNL contours may not change, but the perception of the aviation noise will change if helicopters are included or added. The phrase ''would not increase noise over noise sensitive areas'' is unacceptable to the commenter in that it eliminates public input of which areas are sensitive and under what conditions noise is increased. Helicopter noise has a different character than airplanes. Helicopters tend to warm up longer and fly lower. FAA's response: The critical qualifying factor of the CATEX is that noise would not significantly increase over noise sensitive areas. The FAA uses quantitative analysis to determine significant noise increases. The FAA has published guidance for public review in this Order of the definitions of noise sensitive areas and its methods of assessing noise. In addition, through extraordinary circumstances screening, if an action is likely to be highly controversial on environmental grounds, this action would not be CATEXed. Appendix A, section 6.2, DOT section 4(f), and section 14.4b, Noise, set forth the applicability of Part 150 land use guidelines and the standards of significance for noise increases over residential and traditional recreational land uses. These sections, together with section 4, Compatible Land Use, also provide special guidance for areas in units of the national park system and national wildlife refuges that are of value for their quiet setting, as this is an evolving area.

Regarding the CATEX of paragraph 310t, a commenter notes that this presumes someone would know the flight tracks and noise footprint of helicopters flying in and out of a newly licensed facility, and would also know where noise sensitive areas are, before being able to CATEX the proposed activity. In order to be able to fully analyze these factors, an EA would need to be prepared. This CATEX needs to be modified or deleted. FAA's response: Because this activity would occur at an existing airport, the location of noise sensitive areas would be known. This knowledge would help in determining whether extraordinary circumstances are present. The CATEX is adopted as proposed.

Regarding the CATEX of paragraph 310t, the DOI recommends that the word ''significantly'' should be deleted in the phrase ''would not significantly increase noise over noise sensitive areas.'' FAA's response: As previously stated in this preamble, CEQ regulations provide for Federal agencies to CATEX actions that do not ''significantly'' affect the environment (see 40 CFR 1508.4). Accordingly, the recommendation is not adopted.

Regarding the CATEX of paragraph 310t, a commenter recommended that after the words ''launch facility,'' remove the word ''that'' and replace with ''either of which.'' FAA's response: We concur with the recommendation, and the change is adopted.

Regarding the CATEX of paragraph 310t, three commenters believe that helicopters represent a unique variety of noise, different than that attributable to fixed-wing aircraft, and sometimes more onerous, due partially to the low frequency noise created, as well as to helicopter's ability to hover in one place for long periods of time. The commenters believe that CATEX approval of an ALP containing a heliport—the earliest opportunity to analyze the proposed heliport's environmental impacts—would give carte blanche to new and even more intrusive noise impacts than already exist. The purported limitation contained in the order that a CATEX under this section would only be granted where the proposed facility would not ''significantly increase noise over noise sensitive areas'' is no improvement. The commenter believes that the limitation is so overbroad and vague that virtually any contemplated project could fit within it. FAA's response: The FAA believes the qualifier for this CATEX, backed up by historical experience concerning when significant impacts could potentially result, are adequate to support the CATEX and to provide for environmental review of appropriate exceptions to the CATEX.

Regarding the CATEX of paragraph 310u, the FAA expanded the CATEX to include closure, removal or remediation of fuel storage tanks, and the CATEX was clarified to specify that all actions pertaining to closure, removal, or remediation of a fuel storage tank at a FAA facility must conform to the requirements of FAA Order 1050.15A, Fuel Storage Tanks at FAA Facilities, and EPA regulations 40 CFR parts 280, 281, and 112 in order to qualify for this CATEX.

Regarding the CATEX of paragraph 310v, a commenter supports the inclusion of de-icing /anti-icing facilities. FAA's response: Replacement facilities that fall within the parameters of the CATEX would be included.

Regarding the CATEX of paragraph 310v, three commenters believe that this would go beyond anything previously proposed, in that it would allow not merely the approval of a plan or ALP for a new terminal without environmental review, but also actual construction of the terminal without environmental review as well. Moreover, the commenters contend that purported limitation on applicability to projects of the same size, scope and location is no limitation at all, as the proposed rule contains neither a measure to gauge whether the terminal is ''substantially'' the same size, nor a definition of ''substantially.'' The commenters believe this CATEX has no justification or explanation and is arbitrary and capricious. FAA's response: The FAA does not believe the CATEX is ill-defined, arbitrary, or capricious, or far beyond anything previously proposed. It is applicable to the replacement of reconstruction of a building of similar size and purpose on the same site as the building being replaced or reconstructed. The only change in this CATEX from the current CATEX is the insertion of the word ''terminal'' to clarify that a terminal is considered as a structure or building. All actions qualifying as CATEX's undergo evaluations for extraordinary circumstances. These evaluations must satisfy applicable environmental laws and regulation, many of which require public input. Results of these evaluations help FAA determine if the proposed action will be the subject of an EA (or if potential impacts are significant, an EIS). (see paragraph 304). Therefore, NEPA analysis of actions that qualify as CATEX's does take place.

Regarding the CATEX of paragraph 310w, the FAA found that snow removal, vegetation control and erosion control work for trails, grounds, parking areas and utilities are similar to such practices for roads and rights-of-way, and that none of the actions significantly affect the environment (in the absence of extraordinary circumstances—see paragraph 304). Accordingly, trails, grounds, parking areas and utilities are added to paragraph 310w in the final order.

Regarding the CATEX of paragraph 310x, a commenter asks the FAA to define the difference between ''facility decommissioning'' and ''facility disposal.'' FAA's response: Decommissioning is defined as being no longer operational in the National Airway System (NAS). Disposal includes surplusing of property.

Regarding the CATEX of paragraph 310y, a commenter suggests adding the phrase ''* * * if the proposed use is essentially the same.'' FAA's response: The use of facilities being taken over by the FAA for incorporation in the National Airspace System (NAS) would always be the same. Accordingly, the proposed change is not adopted.

Regarding the CATEX of paragraph 310z, a commenter supports the inclusion of tree trimming to meet 14 CFR 77. FAA's response: The CATEX includes topping or trimming trees to remove obstructions to airspace.

Regarding the CATEX of paragraph 310aa, the DOI has a concern that this CATEX applies to airports near NPS cultural landscape areas where changing paint color, for example, could adversely affect the integrity of the landscape. In such cases, the action should not be CATEXed. FAA's response: This possibility of significant impacts resulting from a change in the paint color of a building would be extremely rare, but would be covered under paragraph 304k.

Regarding the CATEX of paragraph 310bb, the FAA found that the existing CATEX, identified in Order 1050.1D as paragraph 4f under Appendix 5, was inadvertently not included in the CATEX's identified in the **Federal Register** notice of October 1999 for proposed Order 1050.1E. The CATEX in question, ''Purchase of land or easements for existing operational facilities,'' is carried forward unchanged in final Order 1050.1E.

A commenter requests adding the following new CATEX: ''Federal, state or local financial assistance, licensing, local government approval, ALP approval, or FAA action related to establishment of a parachute jump facility, drop zone, parachute landing area, etc.'' FAA's response: We believe that the FAA actions identified in the request are adequately accounted for under the CATEX's of paragraphs 311b and 312b. The other actions identified in the request are non-federal actions and, as such, are not within the scope of the procedures associated with this Order.

Beginning Paragraph 311 Comments. Regarding the CATEX of paragraph 311c, the DOI believes that if actions to return Special Use Airspace to the National Airspace System could include airspace such as the Grand Canyon National Park Special Flight Rules Area, then this CATEX is much too broad and should be reworded or deleted. FAA's response: Special Use Airspace does not include airspace such as the Grand Canyon National Park Special Flight Rules Area. See 14 CFR part 73 and FAA Order 7400.2E, ''Procedures for Handling Airspace Matters.''

Regarding the CATEX of paragraph 311d, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. This becomes significant if the rerouting brings aircraft over or close to noise sensitive areas such as national park units. FAA's response: Paragraph 311d has been revised to replace the phrase ''involving minor adjustments to'' with the text ''that does not alter.'' As revised, this categorical exclusion does not permit modifications that could bring aircraft over or close to noise sensitive areas and units of the national park system. Extraordinary circumstances related to noise sensitive areas, including noise sensitive areas in National Park System units, would ensure the consideration of impacts on such areas when deciding whether to invoke this CATEX.

Regarding the CATEX of paragraph 311e, the DOI believes that this action [designation of alert areas and controlled firing areas (CFA)] should not automatically be CATEXed; sometimes it should require an EA or EIS. This CATEX needs qualification. If these are new designations, they should not be CATEXed. However, if they are designated within existing SUA and do no more than make a minor change to the use of the SUA, they may warrant a CATEX. FAA's response: FAA does not concur. FAA's experience with CFA designations is that they typically do not affect the environment. CFA's are established to contain activities that are conducted in a controlled manner to prevent any hazard or impact to nonparticipating aircraft. Examples of such activities are munitions disposal and rocket test stand firings. Although CFA's are technically classified as SUA, there is no charted airspace designation involved, nor is any airspace reserved for the user. In a CFA, the user simply agrees to keep a watch for passing aircraft and immediately terminate the activity if an aircraft approaches the area; and to adhere to certain visibility conditions to ensure the ability to observe passing aircraft. CFA's are not published on aeronautical charts and aircraft are NOT required to deviate around the CFA. Because CFA's impose no impact whatever on aviation, pilots would not even be aware of the existence of a CFA. There is no statutory requirement for the creation of a CFA. As to the designation of alert areas, since this is an advisory action, it has been removed from the CATEX and placed in paragraph 301 in the final Order. An alert area is a type of SUA that is designated where there is a high volume of pilot training activity, or an unusual type of aeronautical activity is conducted. Designation of an alert area is not required in order for that activity to take place. All activities in the area must be conducted in compliance with applicable Federal Aviation Regulations without waiver. Alert areas are shown on aeronautical charts and serve to inform pilots of the existence of activity that they might not otherwise expect to encounter. These are pre-existing activities that do not require FAA approval. Therefore, the designation of an alert area does not result in any change to the environment in that area.

Regarding the CATEX of paragraph 311f, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. This becomes significant if the rerouting brings aircraft over noise sensitive areas such as national park units. DOI further comments that the 3,000 feet designation does not necessarily relate to impacts, especially where flight tracks occur over national park units. The Nevada DOT believes that this change is inconsistent with the Nevada Statewide Aviation System Plan policies or goals. If incorporated into the document, this CATEX could provide for the establishment of SUA independent of public comment and could undermine the intended purpose of the Joint Military Affairs Committee process. Another commenter believes that because DOD requests for special use airspace establishment or modification are inherently controversial, because there is a paucity of scientific evidence and data concerning the cause and effect relationship between military aircraft overflight and wildlife, recreation, livestock production, and other environmental values, the commenter requests that the FAA's proposed rule be changed to require that all DOD special use airspace proposals for establishment or modification be evaluated at least at the EA level and that a CATEX not be available for such actions. FAA's response: The CATEX in question, originally proposed as item #6, Procedural Action of Figure 3–2, ''Categorical Exclusion List,'' in the **Federal Register** notice, has been removed in the final Order for further study. CATEX 311f in the final Order is marked ''Reserved''.

Regarding the CATEX of paragraph 311i, the DOI believes that this action should not automatically be CATEXed; sometimes it should require an EA or EIS. Impacts on park units may occur from traffic greater than 3,000 feet AGL. FAA's response: Past environmental assessments and impact statements

confirm that the FAA normally proposes changes in air traffic and instrument approach and departure procedures for air traffic in the vicinity of large, busy airports. The predominant land uses in these areas are suburban and residential. Proposed changes to the routes that overfly parks like Zion and Grand Canyon National Park are much less frequent than those in the vicinity of large airports. Assuming, without deciding, that changes in procedures for air traffic at altitudes greater than 3,000 feet may cause potentially significant impacts on park units, these occur in exceptional circumstances. Air traffic and instrument approach and departure procedures for proposed major airport development projects are connected actions that would be part of an EA or EIS.

Regarding the CATEX of paragraph 311i, a commenter believes that impacts from changes to air traffic control procedures over noise sensitive areas should be exempt from regular noise monitoring requirements where they exist, as well as CATEXed as long as the procedures are limited in time and there is a mechanism for coordination with the airport sponsor and the impacted air carriers. FAA's response: Instrument procedures conducted below 3,000 feet AGL that cause traffic to be routinely routed over noise sensitive areas would at least be subject to an EA, which normally would not include noise monitoring. However, noise monitoring should be considered if there are legitimate questions concerning potential cumulative noise impacts on DOT Section 4(f) resources. Such re-routings can potentially cause significant noise impacts and, therefore, cannot be CATEXed. The commenter's proposal is not adopted.

Regarding the CATEX of paragraph 311j, in response to a comment to the similar CATEX under paragraph 307a, paragraph 311j was amended in the final order consistent with the changes adopted in Paragraph 307a. See the discussion for the comment to paragraph 307a in this preamble.

Regarding the CATEX of paragraph 311m, a commenter supports CATEXing short-term air traffic changes below 3000 feet to accommodate airport construction. However, changes of six months duration may be too long (and controversial) for exposure to new aircraft noise. A change in procedures of that duration should be anticipated by FAA and the airport if it is for airport construction. Such changes should be susceptible to an EA. FAA's response: We agree that if it is reasonably foreseeable that construction will last more than six months, an EA would normally be appropriate. However, based upon FAA experience, where the activity will not exceed six months, a CATEX is appropriate, absent extraordinary circumstances. We agree that there may be circumstances in which changes of six months duration that could result in potentially significant long-term impacts. Based on the experience of the FAA in conducting environmental reviews for over short term tests of changes in air traffic procedures at airports like Newark International, Detroit Metropolitan, Minneapolis St. Paul, Washington National, and Dulles Airports, these circumstances are not the norm.

A commenter requested the following new CATEX: ''FAA air traffic control receipt of notification letter for, or issuance of authorization for, parachute jump activity parachute operations, or skydiving activity in the National Airspace System.'' FAA's response: We believe that the FAA actions identified in the request are adequately accounted for under the CATEX of paragraph 311b.

Proposed new CATEX (Table 3–2; Procedural Actions; item #7; ''Establishment or modification of Special Use Airspace (SUA) for supersonic flying operations over land and above 30,000 feet mean sea level (MSL) or over water above 10,000 feet MSL and more than 15 nautical miles from land,'' is withdrawn from the final order in order to further validate by analysis and review of current scientific literature the specified altitude and distance thresholds.

Beginning Paragraph 312 Comments. Regarding the CATEX of paragraph 312b, the DOI believes that the actions should not be automatically CATEXed; sometimes they should require an EA or EIS. Depending upon the location and nature of such actions, the temporary impacts may cause long-term adverse effects that warrant an EA or EIS. FAA's response: The qualifying wording of the CATEX (*i.e.*, that the ''temporary impacts * * * revert back to original conditions upon action completion'') means that actions that cause long-term adverse effects are not covered by this CATEX. The FAA believes the DOI concern is accounted for in the CATEX without the need for further modification.

A commenter requested amending paragraph 312b to include ''Aerobatic Practice Box'' and ''Aerobatic Contest Box'' stating that aviation activities conducted within such airspace per FAA Order 8700.1, Chapter 48, are considered to be equal to ''airshows'' as a type of ''infrequent'' aviation event. Individually or cumulatively these events do not have a significant effect on the human environment, and are not conducted within or above noise sensitive areas. FAA's response: We concur with the request and the conclusions stated and have revised paragraph 312b accordingly.

Regarding the CATEX of paragraph 312d, the DOI believes that while the issuance of the document might be a CATEX, the actions proposed in the documents might not be. This seems too broad. These actions should not be automatically CATEXed; sometimes they should require an EA or EIS. FAA's response: As stated in the CATEX, the actions proposed in the regulatory document are limited to administrative or procedural actions which are typically categorically excluded. See response to comment regarding ''Extraordinary Circumstances'' under the heading ''Comments on General Subject Matter'', above. The need for an EA or EIS would be identified through the extraordinary circumstances analysis process described in paragraph 304.

Regarding the CATEX of paragraph 312f, it was found that the existing CATEX, identified in Order 1050.1D as paragraph 4j under Appendix 4, was inadvertently not included in the CATEX's identified in the **Federal Register** notice of October 1999. The CATEX in question, ''Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment),'' is carried forward unchanged in final Order 1050.1E as paragraph 312f.

A commenter requested the addition of the following new CATEX: ''Authorizations, waivers, certificates, and exemptions for infrequent or occasional actions such as parachute or skydiving demonstration or exhibition jumps, parachute or skydiving competitions or meets; and parachute or skydiving conventions or events that may or may not draw public attention or spectators.'' FAA's response: We believe that the actions described in the requested CATEX are adequately accounted for under the CATEX of paragraph 312b.

Chapter 4 Comments

Beginning Paragraph 401 Comments. Regarding paragraph 401g, the FAA found that the requirements for an EA for the establishment or relocation of Air Route Surveillance Radars, Air Traffic Control Beacons, and Next Generation Radar was not consistent with the categorical exclusion provided under paragraph 309d. Paragraph 401g is consequently amended in the final

Order to indicate that EA's are normally required only if located off of airport property. Paragraph 309d states that if such facilities are located on airport or designated FAA property they are categorically excluded.

Regarding paragraph 401k, the DOI comments that DNL levels (*i.e.*, 1.5 dB increase and 65 dB) are not absolutes. There may be instances where an airport is used infrequently enough for its noise not to significantly affect the annual average DNL, but where its noise could significantly affect a sensitive resource during a sensitive time period (*e.g.*, nesting endangered species off the end of the runway, or a cultural site during a sensitive religious period). Where appropriate, other criteria should be used. FAA's response: Paragraph 401k presents categories of airport actions that normally require an EA, and may require an EIS. It is not the ''normal'' or usual case that a runway strengthening project, which is the subject of DOI's DNL 65 dB comment, would present the type of environmental circumstances envisioned by DOI. However, there is provision in Appendix A to give special noise consideration to national parks and other unique areas, and Order 1050.1E provides flexibility to assess noise effects on such areas that would be lower than DNL 65 dB with metrics other than DNL.

Regarding paragraphs 401m, n, and p, the DOI comments that significant impacts might occur to national park units and noise sensitive areas at flight altitudes greater than 3,000 feet AGL. FAA's response: This response is similar to the one above. Paragraphs 401m, n, and p address the usual and normal EA requirements, and do not preclude preparation of an EA or EIS for actions above 3,000 feet AGL, where appropriate.

Regarding paragraph 401p, one commenter notes that the FAA suggests that EA's would only be required for DOD special use airspace applications where the floor of the proposed area is below 3,000 ft AGL or a supersonic flight is anticipated at any altitude. The commenter agrees with the FAA proposal that supersonic flight anticipated in special use airspace at any altitude should trigger a minimum evaluation through an EA. However, the suggested floor of 3,000 feet AGL for triggering an EA is inappropriate for DOD special use airspace applications. The establishment or modification of special use airspace by the DOD is generally contrary to the established FAA policy of minimizing the proliferation of special use and restricted airspace. Also, there is no basis in the EA or overflight impact assessment literature that establishes that military flight at 3,000 feet AGL is a presumptively safe or environmentally benign level. Accordingly, because DOD requests for special use airspace establishment or modification are inherently controversial, because there is a paucity of scientific evidence and data concerning the cause and effect relationship between military aircraft overflight and wildlife, recreation, livestock production, and other environmental values, and because the establishment of military special use airspace is generally an exception established FAA policy on the nonproliferation of special use airspace, the commenter requests that the FAA's proposed rule be changed to require that all DOD special use airspace proposals for establishment or modification be evaluated at least at the EA level and that a CATEX not be available for such actions. FAA's response: The CATEX at issue has been removed from the final Order for further study. Paragraph 401p has also been accordingly amended in the final Order to remove references to the 3,000 ft. AGL condition on the applicability of the CATEX and paragraph 401p. Paragraph 401p now prescribes that an EA should be conducted for all SUA airspace designations regardless of the base height above ground unless otherwise explicitly CATEXed under Chapter 3.

Beginning Paragraph 404 Comments. Regarding Figure 4–1, the DOI recommends adding the topics of scoping and alternative formulation between steps 3 and 4 of the figure. FAA's response: We concur with the requested change, and the figure is modified accordingly. Scoping remains optional for EA's. Also regarding the same figure, another commenter requested adding ''and alternatives'' to the end of the text of Step 1. FAA's response: We concur, and the figure is modified accordingly. Also regarding paragraph 404, a new sentence was added in the final Order to the effect that an EA for an airport capacity project, an aviation safety project, or an aviation security project may quality and be appropriate for environmental streamlining under provisions of ''Vision 100—Century of Aviation Reauthorization Act.''

Regarding Figure 4–2, the DOI recommends that under the title ''Scope'' the sentence should read, ''Addresses the proposed action's impacts on affected environmental resources (natural, cultural, and socioeconomic).'' Under the title ''Content'' the last bullet should be modified to read, ''Agencies, organizations, and persons consulted.'' FAA's response: Figure 4–2 is intended to provide an outline of the process; more detail is provided in the text. The first DOI recommendation is not adopted. The second DOI recommendation regarding ''Content'' is adopted. Also regarding Figure 4–2, another commenter requested a definition of ''baseline.'' FAA's response: The term is changed to ''existing'' to remove the ambiguity.

Regarding paragraph 404b(5), a commenter recommends substituting the word ''context'' for ''severity.'' CEQ regulations define ''significance'' in terms of both ''context'' and ''intensity,'' where ''intensity'' is equated with ''severity.'' Environmental justice impacts can be overlooked if the analysis is limited to one aspect and not both. For example, a change at an airport or facility may not be significant across a regional population but may be ''intensely'' felt by a sub-population, such as a low-income neighborhood, or low-income workers within but spread out among the regional population. FAA's response: The sentence in 404b(5) containing this terminology has been removed from this particular location in the Order during final review with CEQ because it was misplaced. ''Significance'' is addressed elsewhere in the Order. We agree that the word ''context'' is appropriate, instead of ''severity''. The commenter also suggested that there should be a separate section in the order that covers environmental justice. FAA's response: Environmental Justice is covered in appendix A, section 16.

Regarding paragraph 404c, the following new sentence was added in the final Order: ''If FAA has experience with an environmental management system (EMS) that includes monitoring of the implementation of actions similar to the proposed action and alternatives, the EMS may provide a factual basis for an assessment of the potential environmental impacts.'' The new sentence was added to facilitate coordination of the NEPA and EMS processes. Executive Order 13148 of April 21, 2000 ''Greening the Government Through Leadership in Environmental Management'' requires Federal agencies to use an EMS approach for improving environmental performance. Where EMS's have been implemented, they may assist in the evaluation of environmental impacts. In those cases, the NEPA and EMS processes should be complementary. Similar references to complementary aspects between NEPA and EMS were added to paragraphs 405f(1)(c) and 506h(1) in the final Order.

Regarding paragraph 404d, a commenter asks; What does ''If more than three years have elapsed since the FONSI was issued, the responsible FAA official should prepare a written evaluation of the EA'' mean? Does this refer to reevaluation of an EA/FONSI if a project has not begun within three years? Does it refer to a project that has begun with EA approval but not been completed in three years? Three years will elapse on any FONSI, but the question is what is the trigger for reevaluation? FAA's response: The three-year period begins from the date another agency issues its EA/FONSI. When the FAA adopts another agency's EA, there would be no circumstance under which an action would have begun prior to the FAA's adoption. Paragraph 404d is adopted with changes to clarify that the three-year period starts when the other agency issues its EA/FONSI.

Regarding paragraph 404d, a commenter notes that a significant benefit of this provision is lost if FAA must prepare a written evaluation of the information in the other agency's EA. The purpose of this requirement is to ensure that FAA independently verifies the information in the EA and that the analysis is appropriate, given the approval that FAA must provide. Those goals can be met without the formality of a written evaluation, and this additional step should be avoided. The revised order should retain the procedure for adopting EA's or FONSI's of other agencies, but delete the requirement for a written evaluation. FAA's response: We concur. Independent review does not have to be written, but a written reevaluation is required if another agency's EA is more than three years old. The provision is adopted with the requested change.

The FAA, in the final order, deleted the proposed sentence in paragraph 404d indicating that a copy of an adopted EA or EA/FONSI should be forwarded to EPA. The deleted sentence could have been interpreted as mandatory and that forwarding of such documents is not a requirement of, or consistent with, FAA, DOT, or CEQ policies or CEQ regulations.

Further regarding paragraph 404d, two additional sentences were adopted in the final Order indicating that incorporating by reference may be useful in ensuring that the EA is both concise and clear about the bases for its conclusions.

Beginning Paragraph 405 Comments. Regarding paragraph 405e, the DOI recommends that the fourth sentence should be modified to read: ''However, data and analysis should be pertinent to the impacts and commensurate with its importance.'' FAA's response: The recommended change is adopted. The sentence at issue was further expanded in the final Order to indicate that such background data may be incorporated by reference.

The FAA has revised paragraph 405c to provide that the Office of the Chief Counsel (Regional Counsel and AGC–600) will not waive legal sufficiency review of the FONSI and underlying EA where the proposed Federal action is opposed on environmental grounds by a Federal, state, or local agency or a Tribe. It has been our experience that legal review of the FONSI and underlying EA is in the best interest of the agency in such circumstances.

Regarding paragraph 405d, the discussion on identifying and considering alternatives to a proposed action was amended in the final Order to ensure conformity with CEQ regulations and policies.

Regarding paragraph 405e(2), the DOI recommends that examples should include ''appropriate noise and visual data.'' FAA's response: These types of data are already included in the general text of paragraph 405e(2) (*e.g.*, ''This section shall succinctly describe existing environmental conditions of the potentially affected geographic area(s) * * * It also may include * * * any other unique factors associated with the action.''), and it is therefore unnecessary to list them separately.

Regarding paragraph 405e(5), a commenter asks for a definition for time frames of the actions. FAA's response: The temporal boundary used for the cumulative effects analysis will vary depending on the proposed action and duration of its effects.

Regarding paragraph 405f, a commenter believes that the referenced document ''Considering Cumulative Effects under the National Environmental Policy Act'' is problematic and flawed. FAA's response: This document is the best, currently available guidance from CEQ and is used at the discretion of the FAA. Paragraph 405f(1)(c) has been revised in the final Order to summarize the CEQ regulations regarding cumulative effects.

Regarding paragraph 405f, the Illinois DOT notes that this provision states that the environmental consequences of the proposed action and the no action alternatives should be shown in comparative form and that environmental impacts of other alternatives that are being considered should also be discussed in the EA/EIS. This appears to mean that there should be an impact analysis of alternatives which were considered in the EA/EIS, but do not meet the purpose and need. Clarify. FAA's response: If an alternative is being analyzed under the environmental consequences section of an EA, it has already been determined that the alternative is reasonable; otherwise, it would have been eliminated from further analysis. Paragraph 405f is amended in the final Order to clarify the issue and to ensure conformity of the paragraph with the CEQ regulations and policies.

Regarding paragraph 405g, the Illinois DOT notes that this provision states that when mitigation measures are changed after a FONSI and the changes result in significant impacts, the responsible FAA official must issue a Notice of Intent (NOI) to prepare an EIS. We do not think that every change in mitigation that follows a FONSI, even if it is judged to cause a significant impact, should automatically mandate an EIS. We recommend that the FAA be given flexibility to address the issue without being required in every instance to prepare a full EIS for the project, given all that is entailed in such an effort. FAA's response: An EIS would only be required in this instance when environmental impacts rise to significant levels that are not mitigated below thresholds of significance. If impacts are significant, an EIS must be prepared.

Regarding paragraph 405i, a commenter asks whether any further detail should be provided, *e.g.*, dates or phone numbers, for the list of agencies and persons contacted? FAA's response: This is not required information. It may optionally be provided, to the extent determined appropriate and useful.

Beginning Paragraph 406 Comments. Regarding Figure 4–3, the DOI agrees that the content of the FONSI should include mitigation measures. FAA's response: Comment noted.

Regarding paragraph 406c(1), which prescribes the internal FAA review process, the following sentence from Order 1050.1D, paragraph 56a, which was inadvertently omitted in draft Order 1050.1E, is carried forward in final Order 1050.1E in order to emphasize the purpose of the internal review requirements: ''This internal review is to ensure that related foreseeable agency actions by other FAA elements are properly covered in the statement or finding and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out.''

Regarding paragraph 406d, a commenter asks for clarification on what is meant by ''FONSI's are required to be coordinated outside of the agency

* * *.'' It is unclear if an FAA decisionmaker can satisfy this requirement by relying on the results of normal agency consultation, if a decisionmaker must circulate a draft FONSI for approval by officials from other agencies who have relevant expertise and jurisdiction, or if a decisionmaker is merely obligated to send copies of a FONSI to officials of other agencies. FAA's response: We have modified paragraphs 404f and 406d in the final Order to clarify the procedures.

Regarding paragraphs 406f and g, the Wisconsin DOT believes that not all final EA's and FONSI's need to be circulated to commenting agencies. This is normally only done when requested. FAA's response: Those agencies, organizations or individuals that provided substantive comments are included on a mailing list to receive a copy of the final EA/FONSI.

Paragraph 407 Comments. A commenter believes that this paragraph should be expanded to include the responsibilities of the FAA to self-police with a formal follow-up commitment to ensure that air traffic procedures that are described in the EA/EIS for use with a new runway or airport are followed. It should not become the responsibility of the airport operator to ensure that these procedures are adhered to. FAA's response: The FAA is responsible for assuring the implementation of mitigation commitments within the FAA's sphere of responsibility, such as air traffic procedures. The first sentence of paragraph 407 clearly states that mitigation ''* * * shall be implemented by the lead agency * * *.'' The FAA does not believe that expansion of 1050.1E guidance on this point is necessary. Individual FAA offices may issue more detailed instructions to their respective field personnel.

Paragraph 408 Comments. Commenters noted that the FAA's use of the term ''record of decision'' (ROD) in conjunction with a FONSI is easily confused with the same term used in the EIS process. Both suggested alternative terminology for the FONSI/ROD. FAA's response: This provision simply codifies long-standing policy and guidance that permits FAA to prepare decision documents in conjunction with findings of no significant impact. These decision documents include the same content as records of decision that must be prepared following preparation of an environmental impact statement, as well as identifying the document as the decision/order that is subject to judicial review in accordance with the appropriate statutory review provisions. Use of similar terminology is beneficial because FAA personnel are familiar with the content and purpose of an FAA record of decision. It is also useful because it highlights the legal distinction between a finding of no significant impact and the agency decision to take action based upon the FONSI that forms the basis for judicial review. Therefore, FAA has determined to retain use of the term FONSI/ROD in FAA Order 1050.1E.

Paragraph 410 Comments. The Wisconsin DOT believes that the requirements for EIS's should not be imposed on EA's for purposes of a written re-evaluation. FAA's response: Although there is no legal requirement to perform a written evaluation of EA's, the FAA has previously concluded that there can be a benefit to doing a written re-evaluation for an EA because a written re-evaluation can confirm the continued accuracy and validity of the EA when questions and challenges have arisen. Accordingly, Order 1050.1D already contains such requirements and those requirements are carried forward in final Order 1050.1E under paragraph 410. Further, the time limitations for the life expectancy of environmental documents originally identified in paragraphs 91 and 92 of Order 1050.1D are explicitly set forth under paragraph 402 in the final Order 1050.1E. The time limitations for EA's and FONSI's are similar to those prescribed for EIS's under paragraph 514 of final Order 1050.1E.

Paragraph 411 Comments. The Wisconsin DOT believes that the requirements for EIS's should not be imposed on EA's for purposes of revision or adding supplemental information. FAA's response: Compliance with NEPA to ensure accurate disclosure of impacts would necessitate similar consideration for preparing a supplemental EA/FONSI. Existing Order 1050.1D already contains conditional criteria for preparing a supplement to an EA under paragraph 92. Those existing requirements are carried forward in final Order 1050.1E under paragraph 411.

Paragraph 412 Comments. The Wisconsin DOT believes that the requirements for EIS's should not be imposed on EA's for purposes of review and adoption of EA's proposed by other agencies. FAA's response: We concur in part. We agree that the CEQ's regulatory requirements for commenting (only) on other agency's EIS's should not be made mandatory requirements for the FAA's commenting on other agency's EA's. Such requirements are not contained in Order 1050.1D and it was not the intent of the FAA to imply in Order 1050.1E that such requirements be made to apply to EA's. Thus, references in paragraph 412 to paragraphs 518h and 404h, and proposed paragraph 404h itself, are removed from the final Order 1050.1E. However, as discussed above in the responses to comments on paragraph 410 and 411, the FAA believes that it is entirely proper that certain requirements for evaluation and adoption of EIS's should also apply to EA's. Order 1050.1D already provides for such requirements for EA's in paragraphs 92 and 93 and those requirements are carried forward in final Order 1050.1E as paragraphs 410 and 411. Since the requirements for adopting another agency's EA are already provided under paragraph 404d and since the remainder of proposed paragraph 412 has been deleted, proposed paragraph 412 is redundant and has been removed from the final Order 1050.1E.

Chapter 5 Comments

Paragraph 500 Comments. The FAA found that since the procedure used to file draft, final, supplemental and programmatic EIS's is the same, it would be appropriate to have one EIS filing paragraph and refer to that paragraph in paragraphs 508, 509, 513 and 519. The affected paragraphs were modified accordingly in the final Order.

Paragraph 501 comments. The FAA deleted the third sentence proposed under paragraph 501b in the final Order. The FAA need not necessarily circulate a mitigated EA/FONSI for public and agency comment. Instead, reference is made to paragraph 406e wherein instructions are provided for public review of an EA/FONSI under special circumstances.

Paragraph 501 has been revised to (1) clarify that the significance criteria set forth in 40 CFR 1508.27 should be considered in determining whether to prepare an EIS after an EA has been prepared and (2) include the text of 1508.27.

Paragraph 503 Comments. Regarding Step 1 of Figure 5.1, the DOI commented that the proposed action should not be defined prior to scoping. One of the primary purposes of scoping is to define the proposed action and alternatives. FAA's response: Proposed FAA direct actions and applicant proposals to FAA are usually formulated prior to FAA's determination that an EIS will be required and, therefore, prior to scoping. See CEQ regulations at 40 CFR 1501.7 on scoping: ''There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action.'' CEQ guidance on

scoping states that scoping ''cannot be useful until the agency knows enough about the proposed action * * * to present a coherent proposal and a suggested initial list of environmental issues and alternatives.'' (see CEQ memorandum: Scoping Guidance (CEQ, April 30, 1981) (see FAA Web site at *http://www.aee.faa.gov*). The proposed action may be modified to address issues raised during scoping.

Beginning Paragraph 504 Comments. Regarding Figure 5–2, third bullet, left column, a commenter believes the cited text should say no less than 30 days. FAA's response: ''At least 30 days'' means the same thing as ''no less than 30 days.''

Further regarding Figure 5–2, it was correctly noted that the 30-day lead time for notification of a scoping meeting is suggested FAA policy; not a regulatory requirement. Accordingly, Figure 5–2 was amended in the final Order to change ''must'' to ''should'' in reference to the 30-day scoping meeting notification.

One commenter believes that the Notice of Intent (NOI) should not just be published in the **Federal Register**, but should be mailed to the appropriate local officials in the communities abutting the airport. FAA's response: A NOI must be published in the **Federal Register** and invite state, local and Tribal representatives and the public to participate in the scoping process. See 40 CFR 1501.7(a)(1) and 1508.22. Direct mailings of a NOI is not a CEQ requirement and, accordingly, is not required in Order 1050.1E.

Beginning Paragraph 505 Comments. Regarding paragraph 505a, a commenter notes that the FAA has proposed creating an optional procedure for preparing a scoping document. The commenter believes this additional procedural step is unnecessary and will add more time and expense to the process and yield little, if any, benefit. While it is being presented as an ''optional'' approach, it is likely to very quickly become a standard *de facto* practice. Aviation projects sometimes are controversial, particularly as they relate to community impacts. FAA staff may be reluctant to deny procedural opportunities for the public to provide input, if they perceive that there is opposition. In addition, encouraging 30 days notice for meetings or hearings removes some of the process flexibility the FAA currently enjoys. Similarly, encouraging the creation of a report will mean additional costs and delays for private applicants. The commenter contends that there is no evidence that scoping under the current system is not effective, and FAA should avoid creating what will be perceived as an entitlement when it will make little, if any, meaningful difference to the process. The proposed scoping document should be deleted. FAA's response: We do not concur with the conclusion that an optional scoping document will become a standard *de facto* practice. Documentation of the scoping process is an optional procedure that is available to the responsible FAA official. The proposal to eliminate the optional scoping document is not adopted.

Further regarding paragraph 505a, the third sentence of paragraph 505a was corrected in the final Order to indicate that the purpose of scoping includes identifying and eliminating from detailed study those issues that are insignificant. The correction is necessary to remove a typographical error in the proposed text in question that indicated scoping would ''de-emphasize issues that are significant.''

A commenter noted that preparers need consistent guidance on the content and location in the EIS of the discussion of contextual material, planning forecasts, planning process, other projects (independent and cumulative actions), timing of the proposed action, funding, and required permits. Also needed are working definitions of purpose and need. Guidance as to the latitude available for variation in the organization of the EIS would be useful for preparers. FAA's response: The FAA believes that sufficient agency-wide guidance is provided in paragraph 506. Components and lines-of-business of the FAA may issue more detailed guidance tailored to their specific needs.

Beginning Paragraph 506 Comments. Regarding paragraph 506d, the DOI asks why the proposed action is being presented in this paragraph. This paragraph presents the rationale for the study and the issues that need to be resolved. The proposed action should be described in the Alternatives paragraph (506e). FAA's response: We concur and have modified paragraph 506d accordingly. However for many FAA actions, identification of the proposed action (a brief description) in the context of the agency's purpose and need is appropriate. The decision to address the proposed action in the purpose and need section is left to the discretion of the responsible FAA official.

The FAA has revised paragraph 506e in the final Order to delete the phrase ''but within the jurisdiction of the Federal Government'' and simply refer to the ''rule of reason'' as codified in the CEQ regulations and articulated, qualified, and applied in the case law.

Regarding paragraph 506g, the Illinois DOT notes that the provision states that the environmental consequences of the proposed action and the no action alternatives should be shown in comparative form and that environmental impacts of other alternatives that are being considered should also be discussed in the EA/EIS. This appears to mean that there should be an impact analysis of alternatives which were considered in the EA/EIS, but do not meet the purpose and need. Since this was probably not the intent and is not consistent with FAA NEPA practice, the language should be clarified. FAA's response: We concur with the comment and have modified paragraphs 506g(1) and (2) accordingly.

Regarding Figure 5–3, it was noted that holding a public hearing less than 30 days after issuance of the draft EIS is inconsistent with paragraph 209c, which provides that a draft EIS must be available to the public at least 30 days prior to a public hearing. Figure 5–3 was changed in the final Order to be consistent with paragraph 209c.

Paragraph 507 Comments. A commenter notes that the first statement is quite confusing. The comment period for a draft EIS is a minimum of 45 days (1506.10(c)). No final decision on the proposed action can be made or recorded in a ROD until 90 days after the filing of the draft EIS (1506.10(b)(1)). There is a 30-day wait period after the filing of the final EIS. However, if the final EIS is filed within the 90-day period after filing of the draft EIS, then the decision cannot be made until both the 30-day and 90-day requirements have been met. While the 45-day and 30-day periods can be altered by EPA upon a showing of compelling reasons of national policy, the 90-day period cannot be altered. FAA's response: We concur and have modified paragraph 507a accordingly. Corresponding changes to Figure 5–1 are also made in the final order. The commenter also noted that the statement ''EPA may receive a 30-day extension * * *'' probably is an incorrect interpretation of 40 CFR 1506.10(d)). This statement needs to be rewritten as ''EPA, upon a showing by another Federal agency of compelling reasons of national policy, may extend the 30-day and 45-day periods for up to 30 days, but no longer than 30 days without the permission of the lead Federal Agency.'' FAA's response: We concur and have adopted the recommended text.

The standard language in paragraph 508c(3) has been revised in the final Order to use plain English.

Beginning Paragraph 508 Comments. Regarding paragraph 508h, a commenter

suggests deleting specific reference to EPA's current rating system since these ratings are EPA actions and not FAA actions. They are used as a summary shorthand for the EPA comments and thus do not seem relevant to FAA's order. FAA's response: We concur and have removed the reference accordingly.

A commenter also recommends that this paragraph should clarify that as part of the EIS filing process EPA publishes the official **Federal Register** notice of availability for an EIS. Agencies, including FAA, may also publish an availability notice in the **Federal Register**, but the FAA notice cannot be used on its own. FAA's response: We concur and have added text clarifying the issue to paragraph 507(a).

Regarding paragraph 508c, the requirement was changed in the final Order to specify that the DEIS must be distributed to interested parties, libraries and other public venues prior to formal notification to the EPA. As adopted in the final Order, the responsible FAA official must certify that such distribution has occurred in the FAA's letter to the EPA requesting publication of a Notice of Availability in the **Federal Register**. As originally proposed, the text in question called for concurrent public distribution and notification to the EPA.

Regarding paragraph 508d(2)(e), a commenter believes that it is confusing to mix the EPA EIS filing distribution with the EPA review distribution. The commenter suggested that FAA drop the filing because it is covered in another section. FAA's response: We concur and have deleted the text in question from this paragraph in the final Order.

Regarding paragraph 508d(2)(g), a commenter notes that it appears something may be askew here, but it is not clear. It seems that this paragraph should be presented similarly and contain similar information as paragraph 511e–g. FAA's response: Paragraphs 508 and 511 have been modified to clarify the requirements.

Regarding paragraph 509, a sentence was added in the final Order to specify that the action in question must be in compliance with all applicable environmental laws, regulations, executive orders and agency orders prior to issuance of the ROD. It is desired that all environmental issues be resolved and documented in the FEIS; however, if it is impossible to comply with certain environmental issues in the FEIS, then such issues must be resolved prior to issuance of the ROD.

Paragraph 510 Comments. A commenter noted that the statement ''EPA may obtain a 30-day extension'' probably is an incorrect interpretation of 40 CFR 1506.10(d). This statement needs to be rewritten as ''EPA, upon a showing by another Federal Agency of compelling reasons of national policy, may extend prescribed periods up to 30 days, but no longer than 30 days without the permission of the lead agency.'' FAA's response: We concur and have adopted the recommended text. The commenter also suggests that a sentence be added that states that if FAA approves an overall extension of the comment period, then EPA should be notified so that EPA's **Federal Register** notice can be modified. FAA's response: We concur and have added a sentence to this effect.

Beginning Paragraph 512 Comments. A commenter suggests that some language be added to this paragraph to indicate that the ROD can also be used to clarify and respond to issues raised on the final EIS. FAA's response: We concur and have added the suggested text in the second sentence of the paragraph.

A commenter suggested that paragraph 512 describe the difference between a NEPA ROD and a FAA ROD. It should also state that where appropriate the NEPA decision document and the FAA ROD may be combined into one document. FAA's response: This provision simply codifies long-standing policy and guidance that permits FAA to prepare decision documents in conjunction with findings of no significant impact. These decision documents include the same content as records of decision that must be prepared following preparation of an environmental impact statement, as well as identify the document as the decision/order that is subject to judicial review in accordance with the appropriate statutory review provisions. Use of similar terminology is beneficial because FAA personnel are familiar with the content and purpose of an FAA record of decision. It is also useful because it highlights the legal distinction between a finding of no significant impact and the agency decision to take action based upon the FONSI that forms the basis for judicial review. Therefore, FAA has determined to retain use of the term FONSI/ROD in paragraph 408 of Order 1050.1E. The FAA believes that it would be confusing to reiterate the discussion on FONSI/ROD in Chapter 5.

Paragraph 513 Comments. A commenter suggests that this paragraph include a sentence such as, ''FAA prepares, circulates, and files tiered and programmatic EIS's in the same fashion as draft and final EIS's. FAA's response: We concur and have added a sentence to this effect as the last sentence of the paragraph.

Further regarding paragraph 514, proposed paragraph 514b(3) was not carried forward into the final Order. The provision called for an extension to the three-year time period of assumed validity of an EIS if the proposed action is restrained or enjoined by court order or legislative process. Although the provision is an existing provision under paragraph 91b(3) of Order 1050.1D, the FAA has determined that the provision is no longer necessary.

Regarding paragraph 515, the FAA amended the proposed time limits for EIS's in the final Order to exclude the applicability of such time limits to programmatic EIS's. By their nature, programmatic EIS's are expected to have a longer shelf-life than typical project-specific EIS's.

Beginning Paragraph 516 Comments. Regarding paragraph 516b, a commenter recommends a rewrite of the second to last sentence to read: ''If, however, there are compelling reasons of national policy to shorten the time periods, the agency must consult with EPA.'' FAA's response: We concur and have adopted the requested text.

Regarding paragraph 516c, a commenter recommends deleting the text since it restates what has already been stated in paragraph 515. FAA's response: We concur and have revised the text to cross-reference paragraph 515.

Regarding paragraph 516d, the Wisconsin DOT comments that establishing a new coordination requirement (status sheets) for EIS documents does not seem warranted. FAA's response: The provision stated ''may,'' and therefore would not have been a requirement. However, paragraph 516d has been eliminated as a result of other comments (see next).

Regarding paragraph 516d, a commenter believes that while this procedure makes available information that is not available under current procedures, FAA needs to ensure that its staff does not use this to fill information gaps that should have been addressed in the original planning. Otherwise, important NEPA rights will be lost. For example, the proposed procedure does not give the public the opportunity to comment on the new information. The commenter agrees that allowing public comment on such information, if a supplemental EIS is not required, is not necessary. Nevertheless, FAA should include language in the order that cautions against using this procedure as a safety net to develop information that should have identified from the outset and prepared as part of

the original EIS. FAA's response: We concur with the commenter's concerns. Paragraph 516d has been deleted from the Order. The status is periodically provided throughout the NEPA process.

Regarding paragraph 516d, three commenters note that the paragraph is revised to provide for a new procedure for circulating supplemental information for ''public comment on points of concern.'' We support the inclusion of this new procedure, as long as it is clear that it is not a substitute for a Supplemental EIS where the later is required. However, the present proposed language only discusses the publishing of supplemental information to inform the public, but does not specifically provide for the public's right to comment on this supplemental information. We recommend that it be modified to specifically provide for the opportunity for the public to submit comments on this supplemental information. FAA's response: Paragraph 516d has been removed from the Order in response to the concerns raised by several commenters.

Regarding paragraph 516d, a commenter indicated it is not clear what the purpose of this change to paragraph 516 is, or the circumstances in which the FAA would issue such status sheets. FAA's response: Paragraph 516d has been removed from the Order in response to the concerns raised by several commenters.

Beginning Paragraph 517 Comments. A commenter recommended that this paragraph be clarified and made into at least two paragraphs. The commenter believes that a ''notice of intended referral'' is most often received on a draft EIS, and it may well be sent only to a FAA field office (40 CFR 1504.3(a)). In practice, the letter sent by the referring agency to the lead agency informing it of the referral is normally sent either to the FAA Administrator or, more likely, to the DOT Secretary. FAA's response: We concur with the comment and have modified paragraph 517 accordingly. The commenter further notes that FAA may want to add some guidance that FAA would use when referring another Federal agency's FEIS. FAA's response: We will consider the development of such guidance in future updates of this Order.

Further regarding paragraph 507, the last sentence of paragraph 517c was amended in the final Order to correctly state that an FAA response to a referral by another Federal agency to the CEQ must be made no later than 25 days after the referral; not 20 days as stated in the proposal. An agency's response within 25 days is required under 40 CFR 1504.3b.

Regarding paragraph 519, the FAA clarified this paragraph in the final Order to better distinguish between the CEQ requirements for a draft legislative environmental impact statement (LEIS) and a final LEIS. The final Order now refers to 40 CFR 1506.8(b)(2) which provides the conditions for completion of a final LEIS.

Paragraph 520 Comments. A commenter noted that the term ''FONSI'' should probably read ''EA/FONSI.'' FAA's response: We concur and have adopted the change.

Further regarding paragraph 520, this paragraph has been combined with paragraph 522a and revised to conform to CEQ regulations applicable to informal rulemaking, public involvement in environmental assessments, and issuance of final rules concurrently with FEIS's without waiting 30 days in certain circumstances. Formal rulemaking is used rarely, where a statute other than the Administrative Procedure Act requires a rule to ''be made on the record after opportunity for agency hearing.'' If the DEIS should normally accompany the proposed rule during informal rulemaking, then the same timing should normally apply to other rulemaking processes.

Regarding paragraph 522, the provision (522a) discussing informal rulemaking (*i.e.*, development and promulgation of regulations) was found to be misplaced. The issue is covered under paragraph 520. Proposed paragraph 522a is deleted in the final Order and subsequent subparagraphs renumbered accordingly.

Appendix A Comments

General Appendix A Comments. The Wisconsin DOT comments that each section (2–19) is preceded by a table with reference to applicable statues, etc. Most tables are very complete. However, some (example—sections 12 and 13) have no references. The following text in the section will sometimes discuss specific E.O.'s, etc, that should have been included in the preceding table. Document should be consistent. FAA's response: Revisions to the final Order clarify that for some categories of environmental effects considered under NEPA, there are no special purpose laws.

A commenter believes that few regulations currently exist to protect citizens, to monitor aircraft-produced toxic pollution, or to effectively monitor the health impacts of jet noise. No agency reviews how the FAA does or does not act to protect the safety of those on the ground. The commenter believes that further airport expansion without strict environmental review of toxic emissions, water and ground pollution, and noise impacts sanctions violence against innocent citizens in favor of highly profitable airline operations. FAA's response: There are many Federal, State, and local environmental protection and safety laws and regulations in effect. The evidence of such laws and regulations is found in the requirements expressed in Order 1050.1E.

A commenter notes that appendix A is a very good compendium of environmental requirements and guidance, but recommends that it be deleted from the order and included in a FAA NEPA manual (or desk reference) along with EIS ''how-to'' information. FAA's response: FAA has decided to retain appendix A in its final Order as a helpful attachment to the order. FAA has determined that due to the need to update its NEPA procedures to aid users, the agency will not change the format for Order 1050.1E, but will consider changing the format for subsequent versions of the Order.

Section 1 Comments. The DOI comments that the list of impact categories should include: Cultural Resources, Threatened and Endangered Species, and (if Wild and Scenic Rivers are a category) National Parks and other Sensitive Areas. FAA's response: Cultural Resources are included in section 11. Threatened and Endangered Species are included in section 8. National Parks and other sensitive areas are addressed in a number of other sections where appropriate (*i.e.*, sections 4, 6, 12, 14, etc.). The recommended change to the list of impact categories was not adopted in the final Order.

Beginning Section 2 Comments. A commenter suggested the following three changes: (1) The section 2.1(c) discussion of direct and indirect emissions should include a reference to the issues of cumulative impacts and the need for that type of analysis when appropriate; (2) in the second to last sentence of section 2.1(c), the sentence should be clarified to indicate that the concentrations referred to are modeled concentrations and projected exceedences; and (3) in the section 2.1(i) discussion on General Conformity, a sentence should be added to indicate that it is desirable to complete the conformity analysis before the final EIS. FAA's response: We concur and have adopted the suggested changes.

A commenter notes the following statement in the order: ''To date, FAA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the

presumption of conformity will be published in the **Federal Register**.'' As the commenter reads it, this statement can be understood it two ways—either as a statement of intention (*i.e.*, the FAA will publish a list of presumed-to-conform actions) or as a conditional statement of policy (*i.e.*, if the FAA develops a list of presumed-to-conform actions, then it will publish that list). How should this statement be understood? Is FAA developing such a list now, and if so, when does FAA expect it might become available to the public? FAA's response: It is a statement of policy. When FAA develops such a list, it will be published in the **Federal Register**. However, the statement in question was removed from the final Order in order to prevent any misinterpretation.

Regarding section 2.3 ''Significant Impact Thresholds,'' the following was added in the final Order 1050.1E: ''Potentially significant air quality impacts associated with an FAA project or action would be demonstrated by the project or action exceeding one or more of the NAAQS for any of the time periods analyzed.'' This sentence was added to identify well-established, quantitative, health-based criteria for significant air quality impacts.

Regarding section 2.4, subsection 2.4(e) was split and the split-off portion designated as 2.4(f) (and subsequent subsections re-numbered accordingly) in the final Order 1050.1E in order to separate the distinct issues of ''air toxics analysis'' and ''supplemental analysis of non-aviation sources.''

Also regarding section 2, section 305 of the ''Vision 100—Century of Aviation Reauthorization Act'' (of 2003) eliminates the requirement of an air and water quality certification from the governor of a state for certain airport development projects. The requirement and associated citations have been removed from section 2 (and section 17) of Appendix A of the final Order. Specifically, references to the former requirement (49 U.S.C. 47106(c)(1)(B)) were deleted from the table of statutes and regulations and sections 2.1(a) and 2.4(b) in the final Order, and narrative describing the requirement, as proposed in the third paragraph under section 2.1 of the **Federal Register** notice, was removed from the final Order.

Beginning Section 4 Comments. The DOI believes that airports constructed, modified, or relocated in or near national park units should be included in this section and further notes that national park units are not included or considered in the land use compatibility table or Federal Aviation Regulation Part 150. The NPS and other land management agencies should be considered as ''local authorities'' in the context of the text accompanying Table 1. In addition, the DOI recommends that the use of other noise metrics besides DNL also be presented here; supplemental analyses will often be necessary. FAA's response: While some National Park System units are not specifically listed in Table 1 in Section 4 (14 CFR part 150, Table 1), some of these units include traditional recreational uses that are delineated in Table 1 of Section 4. Moreover, section 4.3 recognizes that ''[s]pecial consideration needs to be given to whether Part 150 land use categories are appropriate for evaluating noise impact on unique and sensitive section 4(f) properties. For example, Part 150 land use categories are not sufficient to determine the noise compatibility of areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute, or to address noise effects on wildlife.'' The NPS is a Federal agency with specific jurisdiction and expertise, and is properly not included in the definition of ''local authorities''. Section 14 of Appendix A addresses special noise consideration and analyses for unique areas such as national parks, including the use of supplemental noise metrics.

Regarding section 4.1(b), a commenter notes that this section requires the airport sponsor to provide documentation in support of the ''compatible land use'' grant assurance. This appears to be part of the FAA's effort to encourage local governments to take a more reasonable approach to airport land use compatibility. Of course, many airport operators do not have land use jurisdiction and are dependent on the good will of other local governments. The FAA must acknowledge this when it reviews the ''evidence'' provided in these future environmental documents. FAA's response: The FAA does understand and acknowledge that airport proprietors may have limited or no land use jurisdiction. The compatible land use assurance includes the qualification ''to the extent reasonable''.

Regarding section 4.1(b), a commenter notes that it is clear how the compatible land use assurances relate to land use planning and regulation in guiding future development. Yet the last sentence says the compatible land use assurances also ''must be related to existing and planned land uses.'' What does this statement mean? What does the FAA envision with respect to compatible land use assurances relating to existing land use? Does this refer to some means of phasing out non-compatible existing land uses? FAA's response: If the existing use of land is compatible with airport operations, the airport proprietor is expected to take appropriate action, to the extent reasonable, to maintain compatibility.

Regarding section 4.2 comments, a commenter noted that this section includes the land use compatibility table from 14 CFR part 150. It includes an apparent contradiction. While the text states simply that land use compatibility is to be determined from the table, the ''Note'' in the table itself has this Part 150 disclaimer: ''these designations do not constitute a Federal determination that any use of land * * * is acceptable or unacceptable. * * *'' The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rest with the local authorities. The language in the text should be amended to agree with the table. The commenter also notes that Table 1 includes a reference to Part 150 that seems inappropriate here. If this is intended, clarity would be improved by specifically noting in the text that Table 1 is taken verbatim from 14 CFR part 150. The commenter also recommends that the section discuss situations where local governments have officially enacted land use compatibility guidelines that are stricter than Part 150. In California and Oregon, for example, many communities have noise standards in their comprehensive (or general) plans. Often, these standards set compatibility thresholds for residential uses at levels below 65 DNL (or CNEL). FAA's response: We concur with the thrust of the recommendations and have modified the text accordingly.

Regarding table 1, a commenter notes that the text indicates that areas experiencing a DNL of 65 dB are compatible with residential use. The DNL 65 dB level, which qualifies residential owners to free soundproofing of a single room, is often referred to as a ''speech interference threshold.'' This is a gross misnomer, and a direct consequence of the year-long average feature of DNL. FAA's response: The FAA disagrees with several aspects of the commenter's statements. The FAA and other Federal agencies have adopted DNL 65 dB as their noise threshold of significance. It has been well established that DNL correlates well with community response to noise. (Schultz, Fidell, and Finegold). See appendix A, section 14.

Regarding section 4.3, the DOI believes that the Part 150 land use categories are not appropriate for

national park lands protected under section 4(f) (of the DOT Act). In the context of national parks, the DOI believes that the thresholds provided in Appendix A are generally not relevant and do not provide an adequate test of significance. FAA's response: Section 4.3 was amended in the final Order to state that part 150 land use categories are not sufficient to determine the noise compatibility of areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute, or to address noise effects on wildlife. As noted in section 6.1 of Appendix A, FAA will consult with officials having jurisdiction over affected parklands when determining the severity of noise impacts and other impact categories as appropriate.

Regarding section 4.3, a commenter believes that the last sentence is troubling. By making the statement, the FAA is opening the door to ad hoc case-by-case determinations of land use compatibility for section 4(f) uses [section 4(f) of the DOT Act]. Perhaps this is the only practical way to handle this, but it seems fairness and consistency would be better served by establishing some criteria or guidelines on which to base compatibility determinations for these uses. (Some guidance is provided in section 6.2, f, g, h, and i, but it is quite general.) At a minimum, the FAA should provide and continually update a compilation of land use compatibility decisions that have been made with respect to section 4(f) properties in environmental documents so that FAA reviewers and EA/EIS preparers have some basis for making land use compatibility decisions and mitigation plans. FAA's response: The last sentence in section 4.3 has been clarified in the final Order to recognize that Table 1 in section 4.2 includes guidelines applicable to traditional recreational uses that may be protected under section 4(f) of the DOT Act.

Beginning Section 6 Comments. The DOI believes that National Park System (NPS) units, which have greater levels of protection and stronger mandates, should be a separate impact topic. As currently written, NPS units would only receive consideration under the FAA order under section 4(f) of the DOT Act. However, even if section 4(f) did not exist, NPS units would require special treatment from Federal agencies. The DOI is concerned that units of the NPS may be significantly adversely affected by FAA actions many miles from the focus of the action and at much lower noise levels than DNL 60 or 65. Although noise can interfere with normal activities associated with the use of NPS units, unlike other ''noise sensitive areas'' as the term is used in the FAA procedures, noise in parks is both a human and a resource issue. NPS policy is to take action to prevent or minimize all noise that, through frequency, magnitude or duration, adversely affects the natural ambient soundscape, other park resources or values, or exceeds levels that have been identified as acceptable to, or appropriate for, visitor uses at the sites being monitored. Therefore, units of the NPS should be in a separate category, not just considered under section 4(f) or as a ''noise sensitive area.'' The DOI also believes that socioeconomic impacts are part of the human environment and should be fully considered in NEPA documents. The NPS possesses special expertise to assess the economic impacts and benefits of actions on park resources. FAA's response: Since there is no legislation directing Federal agencies (other than the NPS) to take particular actions according to specified criteria for units of the national park system, it would not be consistent with the structure of Order 1050.1E to establish a separate impact topic for national parks. FAA disagrees that NPS units only receive consideration under section 4(f). While FAA does not agree with NPS that all human-made noise is an adverse impact on national parks, national parks are recognized under several impact topics in the Order, including noise, as unique areas that merit special consideration. Socioeconomic impacts are considered in FAA environmental documents, and guidance on socioeconomic impacts is in section 16 of Appendix A.

Regarding section 6.1, the DOI believes that section 4(f) of the DOT Act is inaccurately quoted. The text states prudent and feasible alternatives ''or'' all possible planning to minimize harm. The law uses ''and'' rather than ''or,'' requiring that both conditions be met. FAA's response: We concur and have made the necessary corrections. The DOI also states that all units of the national park system possess national significance by definition, and are included under section 4(f). This should be stated in section 6.2 of Appendix A along with the other categories. FAA's response: FAA agrees that units of the national park system have national significance, but does not believe that section 6.2 of Appendix A needs to be revised. Section 6.2 does not provide a list of all section 4(f) properties that are significant. Rather, section 6.2(a) presumes that any part of a publicly owned park is significant unless the officials with jurisdiction over the park determine that the park is insignificant and FAA concurs.

Regarding section 6.2(e), the DOI states that the NPS has sole authority to determine impairment to resources and visitors in units of the national park system, and must concur in any such determination by the FAA in a 4(f) [of the DOT Act] determination. FAA's response: The FAA disagrees and has so stated in a June 6, 2000 letter from the FAA Assistant Administrator for Policy, Planning, and International Aviation to the Deputy Director of the NPS. Under NEPA, the responsibility for assessing the environmental impacts of proposed actions rests with the decision-making Federal agency. This responsibility does not transfer to the NPS at the boundary of a national park. With respect to section 4(f) of the DOT Act, the FAA is required to consult with the NPS regarding direct or constructive use of a national park by an aviation project, but is not required to obtain NPS concurrence. The FAA consults closely with the NPS regarding impacts on national parks and seeks consensus to the extent possible.

Further regarding section 6.2(e), a sentence proposed under section 6.2(i) is revised and moved to section 6.2(e) of the final Order to clarify that it applies to all constructive use determinations and to all types of project-related impacts, and not simply noise impacts on properties located in a quiet setting, which is the subject of section 6.2(i). The sentence is also revised to clarify that FAA's determination is whether project-related noise or other impacts would constitute a constructive use under section 4(f) of the DOT Act. This modification does not change the meaning or effect of the sentence as previously worded, which indicated that FAA would determine whether project-related noise impacts would substantially impair the resources because substantial impairment constitutes constructive use. Finally, a new sentence is added to the final Order that ''Following consultation, FAA is ultimately solely responsible for section 4(f) applicability and determinations.'' This sentence describes long-standing existing authority and does not confer any new authority upon FAA. The sentence is added to avoid confusion of roles between FAA and consulted officials having jurisdiction over section 4(f) resources.

Regarding section 6.2(f), two additional sentences are added to the final Order to emphasize that impairment of a protected resource must be substantial in order to constitute constructive use under section 4(f) of the DOT Act. The second sentence

provides an example of aircraft noise, which is the most common trigger for constructive use by an aviation proposal. These sentences simply clarify, but do not change, long-standing definitions of section 4(f) constructive use.

Regarding section 6.2(g), the DOI believes that the land use compatibility guidelines are not applicable to units of the national park systems, and DNL has little or no applicability. FAA's response: Section 6.2(i) of Appendix A provides special instructions on the applicability of the land use compatibility guidelines to section 4(f) (of the DOT Act) properties of unique significance, such as national parks. There is also special guidance for areas such as national parks under the impact category of noise (section 14 of appendix A).

Regarding section 6.2(h), the DOI notes that the text ''No Effects'' should be changed to ''No Historic Properties Affected.'' FAA's response: We concur and have made the recommended change.

Further regarding section 6.2(h), the FAA concluded that in it's effort to make a more general statement in proposed Order 1050.1E of the applicability of section 4(f) to certain archeological resources, the intent of the original sentence in paragraph 5 of Attachment 2, Order 1050.1D, which established the conditions under which section 4(f) does not apply, was lost. The FAA further concluded that the proposed revised sentence only served to add confusion to the issue. Our intent is to carry forward the existing definitive statement provided in Order 1050.1D and to maintain consistency with the requirements and provisions of the parallel FHWA regulation (23 CFR 771.135g(2)). Accordingly, the sixth sentence of section 6.2(h) is revised in the final Order to carry forward into Order 1050.1E the existing sentence in Order 1050.1D, modified by adding the text to emphasize that a determination that an archeological resource is of value chiefly for data recovery purposes and is not important for preservation in place can only be made after consultation with the appropriate SHPO/THPO. The sentence in question now reads: ''Although there may be some physical taking of land, section 4(f) does not apply to archeological resources where the responsible FAA official, after consultation with the SHPO/THPO, determines that the archeological resource is important chiefly for data recovery and is not important for preservation in place.'' Further, a new (seventh) sentence is adopted in the final Order reading ''FAA is responsible for complying with section 106 of the National Historic Preservation Act (NHPA) (see section 11 of this appendix) regardless of the disposition of section 4(f).'' The new sentence is added in order to emphasize that section 4(f) of the DOT Act and section 106 of NHPA are independent requirements and each, if found applicable, must be complied with.

Further regarding section 6.2(h), the final Order was amended to state that part 150 guidelines may not be sufficient to determine the noise impact on historic properties where a quiet setting is a generally recognized purpose and attribute, such as a historic village preserved specifically to convey the atmosphere of rural life in an earlier era or a traditional cultural property.

Regarding section 6.2(i), the DOI believes that Part 150 guidelines are not applicable to national parks, and the issue is not simply the effects of noise on people as stated, but the effects of noise on park resources and values as well. FAA's response: The FAA is aware of the DOI's views. Section 6.2(i) provides for special consideration beyond Part 150 guidelines, including FAA consultation with officials having jurisdiction over affected section 4(f) resources when determining project-related noise impacts on those resources. The final Order was amended after the first sentence to read: ''Additional factors must be weighed in determining whether to apply the thresholds listed in Part 150 guidelines to determine the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. The Part 150 land use compatibility table may be used as a guideline to determine significance of noise impacts on section 4(f) properties to the extent that the land uses specified bear relevance to the value, significance, and enjoyment of the lands in question. For example, Part 150 guidelines may not be sufficient for all historic sites (see 6.2h above) and do not adequately address the effects of noise on the expectations and purposes of people visiting areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.'' The FAA and National Park Service are seeking to develop special criteria for national parks.

Further regarding section 6.2(j) of the final Order, the FAA added ''mitigation of project impacts'' to the description of measures that may be employed to minimize harm to section 4(f) resources.

Regarding section 6.2(l), the DOI suggests adding wilderness areas to 4(f) properties. FAA's response: Wilderness areas are addressed in section 6.2(b).

Regarding section 6.3, the DOI believes that the same standards for use and constructive use should determine significance, not an additional threshold of ''eliminate or severely degrade.'' If a project uses a 4(f) property, it must meet the standard of no prudent and feasible alternatives and all possible planning to minimize harm before it can proceed. The significant impact threshold proposed in section 6.3 of Appendix A is not an established standard, and it is one that the NPS disagrees with respect to national park units. FAA's response: The significant impact threshold in section 6.3 of Appendix A (related to section 4(f) of the DOT Act) has been reworded to explicitly reference constructive use as the basis for determining significance of effects. The significant impact threshold is reworded for clarity and continuity with the threshold that has been in place since 1985 in FAA Order 5050.4B, Airport Environmental Handbook. The earlier proposed wording was not intended to change the threshold, but gave the appearance of change because it was expressed differently, that is: ''A significant impact would occur when a proposed action would eliminate or severely degrade the purpose of use for which the section 4(f) land was established and mitigation would not reduce the impact to levels that would allow the purpose or use to continue.'' The revised wording adopted in the final Order is: ''A significant impact would occur pursuant to NEPA when a proposed action either involves more than a minimal physical use of a section 4(f) property or is deemed a ''constructive use'' substantially impairing the 4(f) property, and mitigation measures do not eliminate or reduce the effects of the use below the threshold of significance (*e.g.*, by replacement in kind of a neighborhood park). Substantial impairment would occur when impacts to section 4(f) lands are sufficiently serious that the value of the site in terms of its prior significance and enjoyment are substantially reduced or lost. Following this sentence, an additional sentence is added to clarify that if a proposed action has a direct or constructive use, FAA is responsible for complying with section 4(f), even if the impact is less than significant for NEPA purposes. These changes are also responsive to the DOI's comments on section 6.3 that the same standards for use and constructive use should determine significance, and that if a project uses a 4(f) property, it must meet the standard of no prudent and feasible

alternatives and all possible planning to minimize harm before it can proceed. DOI further commented that the significant impact threshold proposed for section 6.3 is not an established standard, and it is one that the NPS disagrees with respect to national park units. In response, FAA is retaining the established standard. FAA is defining significance in terms of constructive use except where FAA and the jurisdictional agency agree that the constructive use has been effectively eliminated or reduced below significant levels. (Such a determination is not expected for national parks, but is not uncommon with respect to direct or constructive use of a portion of an urban playground that is replaced in kind.) FAA is also complying with the requirements of section 4(f) of the DOT Act at all times if a project uses a 4(f) property even if impacts are below significant levels. Finally, the last sentence proposed in section 6.3 regarding consultation with jurisdictional officials when determining the degree of impairment is deleted from the final Order because this determination occurs earlier in the process and is addressed in section 6.2(e).

Section 7 Comments. Regarding the table at the head of the section, the Wisconsin DOT commented that under the heading of oversight agency, ''USDA'' should be prefixed to Natural Resource Conservation Service. FAA's response: We concur and have adopted the requested change.

Section 8 Comments. Regarding the table heading the section, the Department of Agriculture commented that ''The ADC Act of 1931'' should be included under the ''Statute'' heading and ''Wildlife Services'' should be listed under the ''Oversight Agency'' heading. This policy will be used by the FAA's NEPA people and District offices at a minimum. The FAA should include in their NEPA policy that Wildlife Services has wildlife management responsibility and expertise. FAA's response: We have added the ADC Act to the table and new text as section 8.2(c), to ensure that consultation and coordination with wildlife management specialists from the U.S. Department of Agriculture's Wildlife Services will occur as appropriate.

The DOI comments that section 8 does not address FAA responsibilities under the Migratory Bird Treaty Act (MBTA). Birds protected by the MBTA are often taken on or in the vicinity of airports during control operations, and such take requires a permit from the USFWS. Although the MBTA does not expressly protect bird habitats, the FAA must consider the impacts of airport construction and expansion activities on migratory birds and their habitats under NEPA and other federal regulations. New airports are often constructed on or near wetlands, and these proposed procedures should also consider conflicts that might arise between FAA and bird conservation activities promoted by legislation such as the North American Wetlands Conservation Act. FAA's response: A split developed in the federal circuit courts of appeals concerning the applicability of the MBTA to Federal agencies after the FAA issued 1050.1E for comment. Compare *Humane Soc. of the U.S.* v. *Glickman*, 217 F.3d 882 (D.C. Cir. 2000) and *Sierra Club* v. *Martin*, 110 F.3d 1551 (11th Cir. 1997). In addition, Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' was issued ''in furtherance of the purposes of'' among other authorities, the MBTA. The last paragraph in Section 2 of the E.O. states ''These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats, and through the Migratory Bird Treaty Act (Act), the United States has implemented these migratory bird conventions with respect to the United States. This Executive Order directs Executive departments and agencies to take certain actions to further implement the Act.'' The FAA has accordingly revised Section 8 to add language addressing both the MBTA and E.O. 13186. The MBTA requires private parties (and Federal agencies in certain federal circuits) to obtain a permit to hunt, take, sell, or engage in other activities that harm migratory birds, their eggs, or nests. E.O. 13186 requires Federal agencies to enter into Memoranda of Understanding (MOU's) with the Fish and Wildlife Service to promote the conservation of migratory birds. Among other things, these MOU's must ensure that environmental analyses of Federal actions under NEPA and other established environmental review processes evaluate the effects of actions and agency plans on migratory birds. Airport sponsors are responsible for meeting wildlife control measures to ensure safe airport operations. When these measures affect migratory birds, the sponsor must obtain a permit from USFWS any permit required under the MBTA. As a result, USFWS is responsible for preparing the NEPA document for the issuance of that permit. During FAA's environmental analysis of a new airport, or for that matter, any airport project requiring FAA approval, the agency evaluates the effects of the proposed project on birds, wetlands, and other affected resources, in compliance with NEPA and other applicable environmental requirements.

The DOI believes that impacts on Fish, Wildlife and Plants are not just an endangered species issue. In the context of all Federal agencies' responsibilities to minimize impacts on the environment, impacts on all species must be considered. FAA's response: Section 8 of Appendix A is intended to identify and briefly discuss all major statutes and regulations that may be relevant when fish, wildlife, and plants are potentially impacted by a proposed project. Thus, this section does not limit its scope to a discussion of potential impacts to federally endangered species. Instead, this section acknowledges that impacts to fish, wildlife, and plants should be considered based on myriad statutes and regulations.

Regarding section 8.1(a), the DOI recommends that the reference to section 10 of the Endangered Species Act (ESA) should be removed. Recovery plans are not developed under section 10, they are described in section 4. The DOI further comments that the sentence with the reference to candidate species is incorrect and should be changed to read: ''If a species has been proposed for listing as threatened or endangered or critical habitat has been proposed, section 7(a)(4) states that each agency shall confer with the Services.'' FAA's response: We concur and have cited section 4 and adopted the recommended text. The FAA has also added a new sentence properly referencing section 10 and it's associated conservation plan.

Regarding section 8.1(g), the Department of Agriculture notes that section 8.1(h) states one of the goals of the FAA's systematic, interdisciplinary approach used during the decision making process is to ''maintain the health, sustainability, and biological diversity of ecosystems * * *.'' Is this an appropriate goal at an airport, given the potential for wildlife to be a hazard to aircraft and passenger safety? Also, the section states that the ecosystem approach considers all relevant ecological and economic consequences, but there is no statement considering or addressing the safety of the flying public. FAA's response: We concur with the observation and have amended the section 8.1(g) to add FAA's mission to ensure aviation safety with respect to wildlife that are hazards to aviation.

Regarding section 8.2, the DOI comments that there are several mistakes regarding the Endangered Species Act and the section 7 consultation process. The DOI states that it is difficult to identify specific

lines where corrections should be made, as much of the FAA's proposed language regarding section 7 consultation procedures is incorrect. FAA's response: We have revised section 8.2 of Appendix A to correct and clarify the process.

Regarding section 8.2(c), the DOI believes that the discussion of procedures is misleading. The FAA should refer to the interagency consultation regulations (50 CFR 402.13) and the Consultation Handbook for guidance on informal consultation. The regulations at 50 CFR 402.12 regarding Biological Assessment(s) (BA's) also pertain to this section. In general the informal consultation process includes all discussions and correspondence between the Fish & Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) and the Federal agency which are designed to assist the Federal agency in determining whether formal consultation or a conference is required. Informal consultation ends when the Federal agency makes a determination of whether the proposed action will adversely affect listed species or critical habitat. If the Federal agency determines that the proposed action is not likely to adversely affect listed species or critical habitat, and the FWS and/or NMFS concurs with this determination in writing, section 7 consultation is complete. If the Federal agency determines that the proposed action will adversely affect listed species or critical habitat, or the FWS/NMFS does not concur with the determination of not likely to adversely affect, the Federal agency must request formal consultation. FAA's response: We have revised section 8.2 of Appendix A to clarify the process.

Regarding section 8.3, the DOI notes that ''significant impacts'' are defined in this section as when the FWS or NMFS determines that the proposed action would be likely to jeopardize the species. If this definition is applied to the description of extraordinary circumstances, actions that adversely impact listed species up to the point of jeopardizing the species could be categorically excluded from further environmental analysis. FAA's response: In all cases, the FAA will fulfill its responsibilities under the Endangered Species Act in addition to NEPA responsibilities. For NEPA purposes, if a proposed action would result in potential impacts on endangered or threatened species that are not individually or cumulatively significant, a CATEX is allowed under CEQ regulations. A CATEX is not precluded due to adverse impacts; it is precluded due to significant impacts.

Regarding section 8.3, the DOI comments that the words ''significance,'' ''significant,'' and ''significantly'' are used much too broadly. In section 8.3, the FAA chooses to establish a level of significance for endangered species impacts. DOI believes it is inappropriate to connect the term ''significant impact'' as used in NEPA with the determinations made during section 7 [of the Endangered Species Act] consultation. Significant impacts must be determined on a case-by-case basis and should not be tied to section 7 consultations. Significant impacts may occur without jeopardizing the existence of a listed species. This threshold is much too high, and does not apply to non-listed species at all. FAA's response: We agree that impacts may be significant where FWS or NMFS have determined that a proposed action is not likely to jeopardize the existence of a species. Section 8.3 of Appendix A was not intended to set forth a per se rule prohibiting the FAA from issuing a finding of significance under the NEPA unless the DOI has issued a jeopardy opinion. The text of this section has been revised in the final Order to clarify that serious impacts like the threat of extinction are factors weighing in favor of a finding of significance, however lesser impacts, including impacts on non-listed species, may also be significant. In consultation with agencies having jurisdiction or specialized expertise (including Tribes), FAA NEPA practitioners should consider other relevant factors in assessing potential significance such as the existence of uncertainty regarding potential impacts and impacts on biodiversity and the ecosystem. The determination of significance should be based on the best available scientific information concerning factors of population dynamics that affect the sustainability of species populations.

Section 10 Comments. The DOI comments that it may be useful to highlight that CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act] includes provisions for notification of and coordination with natural resource trustees (*e.g.* DOI, NOAA, DOD, DOE, States, Tribes) where there are potential resource damages and/or settlement negotiations with responsible parties due to contaminant releases. FAA's response: We concur and have added text to this effect in section 10.1(a).

Section 11 Comments. Regarding section 11.1, the DOI comments that it is inappropriate to use a CATEX for a project with an ''adverse effect'' on a National Register property. FAA's response: It is noted at 36 CFR 800.8(b)(1) that a project, activity or program that falls within a NEPA categorical exclusion may still require NHPA section 106 review. A categorical exclusion from NEPA does not mean that section 106 may not apply. As previously stated, a CATEX is not precluded based on adverse effects, so long as those effects are not significant.

Regarding section 11.1, the Hawaii DOT comments that discussion of Native Hawaiian religious sensitivities in this section and in the context of Environmental Justice can be a complicated matter in relation to Hawaii airports because of the ceded land issue. Because airport revenues cannot legally be used to reimburse claims by the Office of Hawaiian Affairs, the state has to compensate with other funds. Until this statewide issue is settled, ancient religious sites may be remembered on airports. FAA's response: Comment noted.

Further regarding section 11, the FAA re-drafted section 11 in the final Order to clarify the requirements of the Federal Archeology Program and applicable Federal historic and cultural resource preservation laws and to correct technical inconsistencies with those requirements. Sections 11.2(b) and 11.2(l)(4) and (5) have been revised to reflect the Advisory Council on Historic Preservation's proposed amendment to 36 CFR part 800 in response to *National Mining Association* (NMA) v. *Fowler,* 324 F.3d 752 (DC Cir. 2003), rev'g *NMA* v. *Slater,* 167 F. Supp.2d 265 (DDC 2001) at 68 FR 55354 (proposed September 25, 2003). The phrase in the second sentence of 11.2(b) ''and the SHPO/THPO concurs'' has been deleted because there is no such requirement at this stage in the 106 process under the applicable regulations. Sections 11.2(e)–(h) have been changed to clarify the provisions relating to Traditional Cultural Properties and certain other cultural resources, to distinguish those resources which are not TCP's but may qualify for protection, and to make the terminology more consistent with applicable laws, regulations, and Executive Orders. Section 11.3 was changed in the final Order 1050.1E to add a statement regarding adverse effect findings from the section 106 regulations of the National Historic Preservation Act. Further, the text ''feasible and prudent'' prior to the word ''alternatives'' was deleted from the second sentence in the final order to be consistent with the section 106 regulation cited above. The two sentences in question now read: ''Regulations at 36 CFR 800.8(a) state

that an adverse effect finding does not automatically trigger preparation of an EIS (*i.e.*, a significant impact). The section 106 consultation process includes consideration of alternatives to avoid adverse effects on National Register listed or eligible properties; of mitigation measures; and of accepting adverse effects.''

Regarding section 12.1(a), when consideration is given to light emissions and visual impacts on people and properties covered by section 4(f) of the DOT Act, the FAA believes that the guidance of section 6 of Appendix A, ''Department of Transportation, Section 4(f)'' should be used to determine section 4(f) use and significant impact. The recommended reference to section 6 of Appendix A would ensure that the criteria for substantial impairment set forth in section 6 are appropriately applied to light emissions and visual impacts. The foregoing change is adopted in the final Order.

Regarding section 12.2, the DOI comments that in the context of national park units that may be affected by light emissions by airports or similar facilities, annoyance is not the issue. The issue is impacts on the use and/or characteristics of the unit, and preserving the resources in an unimpaired natural condition. In some cases, the night sky may be an important part of the park's purpose. FAA's response: Sections 12.2(b) and 12.3(b) deal with visual and aesthetic impacts that differ from annoyance.

Regarding section 12.2(b), the FAA added to the final Order text, to the effect, that the mere visual sight of aircraft, aircraft contrails, or aircraft lights at night, particularly at a viewing distance that is not normally intrusive, should not be assumed to constitute an adverse impact.

Section 14 Comments. Regarding section 14 in general, the DOI believes that the significant impact threshold, analysis, and noise methodology (*e.g.*, DNL and CNEL) are mostly inapplicable to units of the national park system. FAA's response: Although DNL is the primary metric for aircraft noise exposure, the FAA recognizes that there are situations, involving locations within the National Park System and elsewhere, in which it is appropriate to perform supplemental noise analysis, which may include the use of metrics other than DNL, in characterizing specific noise impacts from a proposed action. As explained in section 14 of Appendix A, one of the uses of supplemental noise analysis is to describe aircraft noise impacts for specific noise-sensitive locations. The significance threshold in section 14.3 has been qualified to note that special consideration needs to be given to the evaluation of the significance of noise impacts on noise-sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. Section 14.3 further states that the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. In the final Order, section 14.5(g) has been revised to provide specifically that the FAA will consider use of appropriate supplemental noise analysis in consultation with the officials having jurisdiction over the properties in question.

Regarding section 14 in general, a commenter provides the following observations and recommendations: *Observations.* (1) Noise is the biggest environmental problem in aviation. In over 20 years of use of 65 DNL as a criterion, the communities around airports have not agreed that predicted noise exposures under 65 DNL constitute ''no significant impact.'' (2) Aircraft noise has been reduced through technological developments over this time, but Stage 3 jets are not ''noise-less.'' In fact levels in excess of 85 dBA (max level) have been measured from these jets at altitudes of over 3,000 feet. Thus, they would interfere with speech communication in the classroom, according to the FICON report. (3) Every time flight paths or corridors are changed, newly-impacted communities complain vociferously. This occurs even when changes in impact are below 1.5 dB in DNL, predicted noise exposures are only 55 DNL, or aircraft are over 3,000 feet. Many have stated that the changes are ''illegal,'' even though with the current procedures they are not. (4) Jet arrivals 15 nautical miles away and at altitudes over 8,000 feet result in nighttime complaints about sleep interference. So do turboprop operations (although at lower altitudes). *Recommendations.* (1) Require environmental noise assessments for all projects to 55 DNL. FAA's response: The recommendation is not accepted as a mandatory requirement. FAA's guidance in Order 1050.1E is consistent with the conclusions and recommendations of the FICON report on the scope of noise analyses within the NEPA context. Recommendation (2) Require environmental noise assessments for all changes in nighttime procedures (10 pm to 7 am), showing where impact is increased and where it is reduced around the affected airport. FAA's response: The FAA disagrees that all changes during nighttime hours should generate a detailed noise assessment. The nature of the nighttime weighting of the DNL metric already makes it more sensitive to changes in air traffic during nighttime hours, triggering an assessment in appropriate cases. Also, see response to *Issues of Special Interest* topic DNL 65 dBA provided earlier in this preamble. Recommendation (3) Change the 3,000 foot exemption to 10,000 feet. FAA's response: See response to *Issues of Special Interest* topic 3000 ft. CATEX provided earlier in this preamble. Recommendation (4) If noise monitoring information is available, require a comparison of a current year contour prediction with comparable measured data. FAA's response: Noise monitoring can be a useful supplement, but is prone to errors since there is no standard noise monitoring methodology. As such, it cannot be used to replicate noise contours. The FAA suggests that monitoring be done on a voluntary basis. Recommendation (5) Revise noise-sensitive and noise compatibility criteria (section 4 of appendix A) to account for known speech interference effects. As a minimum, the ''compatibility'' DNL should not be higher than 60 DNL. A future goal could be the compatibility criteria developed by HUD in the 1970's, where compatible DNL's for residential areas were on the order of 45 dBA. FAA's response: The FAA does not believe there is an adequate basis for changing the threshold of significance. State and local governments have the discretion to define land use compatibility criteria that differ from the Federal guidelines. The FAA believes the reference to 45 dBA is an interior compatibility guideline, not an exterior one. The FAA's compatibility goal for insulating the interiors of noise sensitive structures is 45 dBA. Also see response to *Issues of Special Interest* topic DNL 65 dBA provided earlier in this preamble.

Regarding section 14 in general, a commenter believes that, while recognizing that the DNL is the recommended noise metric and should be used as such for purposes of assessing aircraft noise exposure, the revised order appears to open the door to supplementing the DNL metric with other ''specific noise effects'' on a potentially open-ended basis (''to assist the public's understanding of noise impacts''). Unfortunately, the proposal does not sufficiently explain and circumscribe the instances in which the FAA might look to such supplemental

''noise effects'' and how, if at all, they would be evaluated in the context of a particular federal action. It therefore creates a potential for misinterpretation and misapplication of the underlying regulatory requirements. Indeed, the discussion of these effects and their impacts provides little in the way of guidance in their potential application other than to indicate that they will be considered on an ad hoc basis. Underlying this deficiency is the reality that the referenced supplemental noise effects have little significance in assessing noise impacts other than in situations involving extremely sensitive noise impact areas such as national parks, hospitals, schools, and the like. The proposed revised order should clarify the limited significance of applicability of such supplement ''noise effects'' in the NEPA context and ensure that the consideration of such effects is addressed only in appropriate and carefully circumscribed contexts consistent with existing regulatory provisions relating to the use of metrics, such as those set forth in Part 150 of the Federal Aviation Regulations. FAA's response: Comment noted. As stated in section 14.5 Supplemental Noise Analysis, these supplemental metrics are useful in characterizing specific events and conveying to the affected communities a clearer understanding of the potential on their living environments as a result of proposed changes in aircraft operations. (See FICON report, August 1992 and FICAN finding on awakenings from sleep, May 1998.)

Regarding section 14 in general, a commenter believes that if any DNL contours or data are used in noise analysis, it must be made a requirement that the estimated accuracy of the modeled data, as dependant on the assumptions made in the modeling and as compared to actual measurements, should be specified. The commenter also recommends that a table should be provided translating the dB data as linear ratio to the average environmental non-aviation noise level. FAA's response: FAA is confident in the accuracy of our noise models to determine the effects of aircraft noise. FAA has no requirements regarding noise measurement since short-term measurements can be less accurate than modeled data, which are based on specific controlled measurement data. Noise measurements cannot practically replicate noise contours and cannot be used for forecasting future impacts. Further, measurements to establish ambient non-aviation noise levels are very difficult to acquire accurately.

Regarding section 14 in general, a commenter believes that as long as the FAA continues basing its policies and thresholds on DNL values (with only occasional consideration of other metrics) the problems of the past will persist. The root cause of the problem is that DNL incorrectly uses a long-time, energy-averaging process to characterize the effects of flyovers, which are intrinsically short duration events, with significant amplitude excursions above the ambient noise. Furthermore, DNL routinely combines levels ranging from 40 to 100 dB, which corresponds to averaging (acoustic energy) values ranging from 1 to 1,000,000, respectively. Averaging objects of such an extreme dynamic range is not a good scientific practice because it tends to obscure the true effects of the ''high energy events'' associated with flyovers. FAA's response: See response to *Issues of Special Interest* topic DNL 65 dBA provided earlier in this preamble.

Regarding section 14 in general, a commenter notes that this section is based entirely on the metric of a noise contour which exceeds 65 decibels. The 65 dB threshold is inadequate when comparing the noise impact of increased plane traffic over neighborhoods that are adjacent to properties of unique significance such as national parks. The text of Appendix A does state that such a situation should be considered when making an assessment of noise impact. Unfortunately, this clause which protects areas of unique significance from improper noise assessments is negated by a prior paragraph in section 14 which empowers the FAA to use the noise impact model AEM and to make a determination of no significant impact using that model which is based on the 65 dB threshold. This section creates a system that negates the use of noise models with lower thresholds, even when appropriate, and creates a conflict of interest by allowing the FAA to apply the noise models themselves. This entire section should be rewritten to require EPA oversight or objective third party review of FAA noise assessments. FAA's response: The instructions on the use of AEM do not preclude special noise consideration of locations of unique sensitivity, including such locations in national parks. FAA continues to support the Federal land use compatibility guidelines for residential land uses and for parks to the extent relevant to activities in the parks. Sections 4, 6, and 14 of Appendix A have been revised to give special consideration to areas of unique significance such as national parks. Neither NEPA nor CEQ regulations mandate third-party oversight by EPA or any other entity of FAA's noise assessments. FAA's noise assessments are subjected to scrutiny by other agencies and the public through the NEPA process.

Regarding section 14.1, the DOI comments that the section fails to mention the need for and applicability of ''supplemental analyses.'' It is not sufficient to simply say that Part 150 categories may need some adjustment with respect to national parks; they do not apply at all. In addition, while FAA can certainly specify what types of analysis it normally finds prudent and acceptable, the DOI knows of no FAA authority to limit presentation of additional analysis which an agency, such as the NPS, or other entity believes is important for the decision-maker's consideration in assessing the full extent of impacts. DOI believes there is enough controversy surrounding the applicability of specific noise methodologies in specific situations, notably national park situations, which additional flexibility should be provided in these procedures to present the most relevant information and analyses to the decision-makers and the public. FAA's response: Guidance in the final Order 1050.1E has been strengthened to require the weighing of additional factors in determining whether to apply the thresholds listed in Part 150 land use guidelines to determine the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. There is variability among units of the national park system and a variety of uses within national parks, including traditional recreational uses. FAA does not assume that all Part 150 categories of uses would be inapplicable for all park situations, but does explicitly state that Part 150 guidelines do not adequately address the effects of noise on the expectations and purposes of people visiting areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. (See section 6.2(i).) Order 1050.1E clearly provides flexibility for noise assessment in locations to which the Part 150 guidelines would not be relevant, including such locations in national parks, and provides for consultation with NPS on analyses. However, ''flexibility'' does not mean that FAA is required to perform all additional analyses that may be requested by other agencies.

Regarding section 14.1, a commenter, noting the inclusion of a reference to the

MOA between the FAA and DOI/NPS that specifies coordination of noise minimization efforts over DOI/NPS lands, asks the questions: Do these requirements apply when the sponsoring body is another federal agency? Are other agreements in place that place similar requirements or constraints on the FAA for noise or other categorical evaluations? FAA's response: The paragraph in question relates to the Interagency Agreement (IA) between the National Park Service (NPS), Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), and Federal Aviation Administration (FAA). The IA, while recognizing the public freedom of transit of the navigable airspace, was developed to identify cooperative efforts by each agency, individually and jointly, to seek voluntary cooperation with the 2,000 feet above ground level (AGL) minimum altitude advisory (FAA Advisory Circular [AC] 91–36C) to reduce the incidence of low-flying aircraft, including fixed-wing aircraft, helicopters, ultralight vehicles, balloons, and gliders, over NPS, FWS, and BLM administered lands. The IA, effective January 15, 1993, was set to expire on December 31, 1999. However, by letter in November 1999, the FAA Administrator extended the cancellation date for one year to allow revision of the IA. Efforts to further extend the cancellation date past December 2000 were overtaken by higher priority events and therefore, by default, the IA was cancelled. The FAA and the other signature agencies of the IA determined that the procedures outlined in the original IA were still valid and should remain in force. Therefore, an interagency team was formed to update the IA, and information gathered during this process was used as a basis for updating the Advisory Circular. Since the updated Interagency Agreement has not yet been signed, the paragraph in question has been deleted from the final Order 1050.1E. However, once the new IA and the associated Advisory Circular related to Visual Flight Rules (VFR) Flight Over Noise Sensitive Lands (AC91–36) are signed, appropriate notification will be made in the **Federal Register**. Additionally, a decision will be made at that time as to whether the Order 1050.1E should be changed to include the updated documents.

Regarding section 14.1(b), a commenter noting the text calls for use of the most current version of INM or HNM; asks, current at which point in the study? FAA's response: At the time the FAA begins its noise analysis.

Regarding section 14.1(b), a commenter notes that the text references the AEM as an appropriate screening tool. The model has not been updated for years and uses algorithms and information from Version 3 of the INM as a foundation for noise level description. It is significantly outdated given the new aircraft that have entered the fleet in the last eight years. FAA's response: See response to *Issues of Special Interest* topic AEM.

Regarding section 14.1(b), a commenter notes that the text references the ATNS as an appropriate screening tool. The document should assure the availability of the model for screening. The FAA hasn't released the model for use except for specific types of projects. FAA's response: The ATNS is available upon request. Requests may be made to the Federal Aviation Administration, Noise Division (AEE–100), 800 Independence Ave., SW., Washington, DC 20591. (AEE–100 handles distribution of ATNS as a courtesy to the Air Traffic Organization which is responsible for the content and application of the ATNS.)

Regarding section 14.1(c), a commenter believes that guidance should be provided as to the justification required for deviation from INM and/or HNM standard and default data. The INM Users Manual provides guidance that should be recognized for the modification of model default data bases. FAA's response: Comment noted. See revision (section 14.2c).

Regarding sections 14.1(c) and (d), a commenter believes that these requirements, while justified, appear to discourage the modification of INM input data to better represent use-specific or locally-mandated operational techniques and mitigation actions. Not all operators fly using the same procedures, nor do all airports request the use of the standard departure procedure by all aircraft or from all runways. FAA's response: Comment noted. See revision (section 14.2c).

Regarding section 14.2(a), a commenter notes that the text states that if mitigation abates noise below significant noise impact threshold levels, an EIS need not be prepared. Elsewhere, the order says that if controversy is sufficient, an EIS must be prepared. Does controversy still take precedence, requiring an EIS be prepared? FAA's response: A reasonable disagreement concerning a project's risks of causing environmental harm is a circumstance that may warrant preparation of an EA as noted in paragraph 304i. Where there is such a disagreement, absent a well-settled threshold of significance and binding mitigation measures that reduce impacts below that threshold, the criteria for significance under 40 CFR 1508.27 must be carefully considered to determine whether an EIS is required. These criteria relate to context and intensity, and include the degree to which effects are likely to be highly controversial and the degree to which the possible effects on the human environment and highly uncertain or involve unique or unknown risks. In these circumstances, the agency would also want to consider whether the circumstances warrant making the FONSI available for 30 days before the agency makes its final determination whether to prepare an EIS under 40 CFR 1501.4(d)(2).

Regarding section 14.2(b), a commenter recommends that, following the sentence, ''Use of an equivalent methodology * * *'' the following sentences should be inserted: ''For SUA proposals, AEE has approved the following DOD noise computer models as equivalent methodologies, as appropriate: MR NMAP (airspace, MOA's Ranges), NOISEMAP (airfield noise), BOOMMAP (sonic boom), BNOISE (blast noise and ground-dropping ordnance or weapons) and SARNAM (small arms range). AEE has approved the Noise Integrated Routing System (NIRS) computer model for quantifying the predicted change in noise exposure for noise analysis conducted for EIS's. The NIRS program is an adaptation of the INM that facilitates noise exposure analysis of Air Traffic applications. It is tailored to complex Air Traffic applications involving high altitude routing and broad area airspace modifications affecting multiple airports. NIRS may also be applied to other complex airspace modifications in the terminal or enroute environments that are difficult to assess using other methods. NIRS may be used in place of INM in cases where noise analysis requires processing capabilities that are not part of the current version of INM.'' FAA's response: FAA has approved the DOD-developed computer models MR_NMAP and BOOMMAP for use and analysis of SUA. See revision to section 14.2.

Regarding section 14.3, a commenter recommends that this section clearly state that an increase of 3.0 or more decibels of DNL (CNEL) between 60 and 65 decibels, where there is an increase of 1.5 decibels or more within the 65 DNL is not to be considered a significant impact. FAA's response: The purpose of section 14.3 is to define a significant impact. The omission of reference to a 3 decibel increase between DNL 60 and 65 dB means that it is not a significant impact.

Regarding section 14.3, a commenter recommends that this section clearly

state whether exposure of noise sensitive uses to a level of 65 DNL (CNEL) is or is not a significant impact, regardless of degree of change between no action and project conditions. FAA's response: While DNL or CNEL 65 dB is considered a significant level of exposure, it does not automatically signify that a proposed action is causing a significant effect. A significant effect would occur when a proposed action causes a noise sensitive land use located in the DNL 65 dBA contour to sustain at least a DNL 1.5 dBA increase, or if such an increase places the sensitive land use in the DNL 65 contour.

Further regarding section 14.3, the text was amended in the final Order to state that special consideration needs to be given to the evaluation of the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges and historic sites, including traditional cultural properties. For example, the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

Regarding section 14.4, the EPA believes that this section should give guidance that in most cases the same INM version should be used for all analysis (current or base year, operational year and future year). The EPA believes that some guidance should be given regarding the selection of the current or base year. We have seen a number of FAA projects where the current year is four or five years earlier than the date the draft EIS is published. In general, the EPA believes that the last year in which there is actual aircraft operational data is appropriate. FAA's response: The selection of the base year is related to the timing of planning for proposed projects. Planning time lines vary from close proximity to the timing of Draft EIS's to greater distances in time. The FAA is responsible for assuring that current conditions are reasonably represented in either case. Since technical analyses used to prepare a Draft EIS usually take longer than a year, the specificity that EPA suggests would cause analyses to be considered outdated before many Draft EIS's could be issued.

Regarding section 14.4, the EPA believes that a major concern with this section is the lack of any noise mitigation guidance. This section should contain general guidance on when it is appropriate to require the use of mitigation measures such as acquisition, easements and sound proofing. This guidance should be built around the general assumption that residential housing within the DNL 65+ contours is a non-compatible land use. FAA's response: The FAA encourages and supports noise mitigation. However, there is no Federal law that requires the use of designated mitigation measures such as acquisition, easements, sound insulation. The specifics of noise mitigation are tailored to individual airport and community situations and preferences. All of the above techniques are equally available to use; none is specifically required. FAA has issued other reports on the uses of various noise mitigation techniques.

Regarding section 14.4(a), a commenter notes that AEM hasn't been updated for years and does not include many aircraft now common in the operating fleet, including all retrofits of Stage 2 aircraft to Stage 3 levels, as well as many recent versions of Stage 3 aircraft. Further, changes in runway use patterns may significantly modify the contour size and shape even though the ground track location and flight profile do not change. The AEM either should be updated on a regular basis or not be used as a screening tool for EIS considerations of the potential impact of aircraft noise exposure. FAA's response: AEM is now updated on a regular basis. See response to *Issues of Special Interest* topic AEM provided earlier in this preamble.

Regarding section 14.4(b), the DOI recommends that the fourth sentence be modified to read: ''In general, many studies to date indicate that aircraft noise probably has a minimal long-term impact on animal populations under most circumstances. However, some studies on specific species in specific circumstances have indicated an impact, and most studies are generally not conclusive either way.'' The DOI believes that especially in national parks where preservation of the unimpaired natural environment means that such animal adaptations as habituation can be major impacts, the unmodified statement is inaccurate. FAA's response: Upon further review, we find that both the original proposed sentence and the proposed change by the DOI are overly generic and add nothing constructive to our procedures for assessing impacts on wildlife populations. Accordingly, the sentence is deleted in the final Order. The operative procedure is captured in the last sentence of section 14.4(b): ''When instances arise in which aircraft noise is a concern with respect to wildlife impacts, available studies dealing with specific species should be reviewed and used in the analysis.''

Regarding section 14.4(c), the DOI believes that the FAA needs to add a discussion on other acoustical modeling and measurements; those described are often not appropriate for national park units. FAA's response: The comment is not applicable to this section. Guidance on supplemental noise analysis is in section 14.5.

Regarding section 14.4(c), a commenter questions whether analysis according to FICON guidance ''should be done'' or ''must be done'' to consider changes of 3 decibels within 60–65 decibel range if 1.5 decibel increase occurs above 65 DNL? FAA's response: The correct text is ''should be done.''

Regarding section 14.4(c), the FAA modified and expanded the last sentence in the final Order to more adequately capture the 1992 FICON recommendation the consideration of mitigation of noise in certain noise sensitive areas.

Regarding section 14.4(d)(1), a commenter believes the development of a 60 DNL (CNEL) contour will be required if the 3.0 decibel increase is triggered. In practice the contour sets the out boundary of the area of exposure increase. FAA's response: If the 3 decibel increase between DNL 60 and 65 dB is triggered, noise sensitive areas that would experience that level of increase may be identified by a grid point analysis or by a contour. The DNL 60 dB contour is optional.

Regarding section 14.4(d)(2) and (3), a commenter believes the INM ''contour difference'' function should be required to delineate the areas exposed to 1.5 and 3.0 decibel increases between the no action and project cases. FAA's response: As long as clear identification is provided, the method of identifying such areas is not mandated.

Regarding section 14.4(e), a commenter asks; what constitutes the ''current'' conditions—project initiation, conclusion or some threshold year? FAA's response: The current condition is usually project initiation, but this may vary. The current condition should reasonably portray the existing environment that may be affected by the proposed project.

Regarding section 14.4(f), a commenter believes that the provision that noise monitoring is not required and should not be used to calibrate the model is important enough to be capitalized. In California, state law requires calibration by measurement for quarterly reports of noise exposure patterns submitted to CalTrans Noise Office. It is frequently very difficult to match the measured and modeled data, particularly if modifications to the model are not allowed without

significant justification and measurements cannot be part of the justification. FAA's response: Comment noted. The commenter agrees with Order 1050.1E guidance.

Regarding section 14.4(f), a commenter concurs that the noise modeling should not be required, but why does the revised order not allow monitoring to be used to calibrate the model? The commenter acknowledges that short-term monitoring cannot be used for calibration purposes. However, if an airport has a NOMS system (including a series of permanent noise monitors located within the 65 DNL) that compiles DNL information and other data for a full year, why are those data not allowed to be used to fine-tune the modeled results? The commenter has spent (and will spend) significant dollars for its NOMS and believes that this system can give excellent information to adjust future modeled results for the INM through a comparison with actual yearly levels recorded from the NOMS system. The comment is not that an airport sponsor must use the NOMS data, but that the NOMS data should be allowed to be used during the preparation of environmental documents to fine-tune the noise analysis. FAA's response: FAA recognizes the guidance documents of the SAE Aviation Noise committee as the appropriate methodology for assessing noise exposure around airports. This group performs comprehensive peer review of all recommended enhancements to modeling aircraft noise. For FAA to adopt a ''blessed'' procedure, an airport sponsor would need to submit a proposal for utilizing noise monitored data, have this process peer reviewed and validated, and then published as an Aviation Recommend Practice (ARP).

Regarding section 14.4(i)(1), a commenter believes that the number of persons within a contour is a very fluid number and cannot be simply identified. It is always an extrapolated value based on the number of dwellings within the contour and some population per dwelling unit factor. Population is only as accurate as the census and then only on the date of the census. Furthermore, we do not mitigate people, we mitigate dwellings. Therefore, rather than identifying the numbers and changes in people, the commenter believes that the FAA should identify the number of dwellings and estimate the population in them. FAA's response: The paragraph has been revised in the final Order to allow either the number of residences or the number of people to be provided.

Regarding sections 14.4(i)(1) and (2), a commenter asks; are population, residences and noise sensitive uses required to be identified within the area exposed to 3 decibel increases within 60–65 DNL contour range? This is not addressed by the order. FAA's response: To comply with FICON's recommendation, FAA would do supplemental grid point analysis in the DNL 60–65 contour, if FAA determines that a project would cause a significant noise impact (*i.e.*, a 1.5 dB increase over noise sensitive areas within the DNL 65 contour). The analysis is needed to determine noise sensitive land uses in the DNL 60–65 that would experience project-related DNL 3 dB noise increases. If such uses exist, FAA will identify them and consider mitigation. This guidance is in section 14.4(c), rather than 14.4(i).

Regarding section 14.4(j), a commenter believes that the last paragraph of this section might be better placed as the first paragraph of the subsequent section. FAA's response: The FAA disagrees with the suggested location change of this paragraph. This information would be part of FAA's basic noise evaluation, not supplemental noise analysis.

Regarding section 14.5, the DOI comments that ''time above'' A-weighted sound level is not as valuable as ''time audible'' in many national park situations. Both metrics should be listed; they are usually not equivalent in parks. In addition, the L90 value should also be listed as one measure of the natural ambient sound level. FAA's response: The FAA does not agree that the L90 value is an appropriate NEPA noise threshold since L90 represents the quietest 10 percent of monitored noise. In addition, the final Order provides a list of several supplemental noise metrics, including both ''time above'' and audibility (''time audible''), and notes that supplemental noise analysis is not, by itself, a measure of adverse aircraft noise or significant aircraft noise impact.

The FAA added a new section 14.5(d) to the final Order to emphasize that the Air Traffic Noise Screening procedure (ATNS) must be used for proposed air traffic or special use airspace actions above 3,000 feet above ground level. The ATNS determines if a proposed action would increase the community noise level by 5 decibels or more. Where the proposed action triggers the 5 decibel criterion, the FAA then considers whether there are extraordinary circumstances (paragraph 304) that warrant preparation of an environmental assessment.

The FAA added a new section 14.5e to the final Order specifying that the Noise Integrated Routing System model must be used for air traffic airspace actions where the study area is larger than the immediate area of an airport, incorporates more than one airport, or includes actions above 3,000 feet above ground level.

Regarding section 14.5(f)(1), a commenter notes that INM cannot compute contours or simple grid point analysis of the highest SEL to which an area is exposed. To obtain meaningful data, a much more costly and time-consuming detailed grid analysis is required. SEL contours can be computed for single aircraft events, but when more than one event is included in the assessment, the SEL is the cumulative noise resulting from the several events, without averaging across a period of time. FAA's response: Maximum SEL is not a required metric for policy decision or environmental disclosure. Users familiar with INM are able to obtain this value for grid point analysis. Maximum SEL contours are not defined.

Regarding section 14.5(f)(2), a commenter believes that ''Lmax'' can also provide the highest noise level achieved at a location during a period of time assessed, *e.g.*, the loudest event during an average day. FAA's response: Lmax is a single event noise metric that is the highest A-weighted sound level measured during an event. It is included as a supplemental metric in section 14.5(f)(2).

Regarding section 14.5(g), a commenter believes that the converse of the last sentence of the section implies that single events below 85 dB may be assumed not to have some effect on communication in the classroom. This statement is too broad. FAA's response: The FAA concurs. The last two sentences in question have been deleted in the final Order and a reference to FICON substituted in lieu thereof. Further regarding section 14.5(g), the word ''community'' was deleted from the first sentence to broaden the applicability of the section to National Parks. Wording was added to the end of section 14.5(g) to emphasize that the ''FAA will consider use of appropriate supplemental noise analysis in consultation with the officials having jurisdiction for national parks, national wildlife refuges, and historic sites including traditional cultural properties where a quiet setting is a generally recognized purpose and attribute that FAA identifies within the study area of a proposed action.''

The FAA changed the title of section 14.8 in the final Order to ''Facility and Equipment Noise Emissions.'' This

change better relates the title to the intent of the section, which is to consider only those local noise emissions from the facility and associated equipment and machinery.

Section 15 Comments. The DOI comments that secondary (induced) impacts can often be extremely important where national park lands are involved. A nearby airport can significantly change park visitation patterns and numbers. FAA's response: Secondary impacts are always considered.

The Wisconsin DOT recommends that a discussion of ''cumulative impacts'' should be added to this section. FAA's response: Cumulative impacts are described and discussed in Chapter 5, paragraph 500c of Order 1050.1E. Cumulative impacts are not a separate impact, but may potentially occur with respect to the other impact topics in Appendix A. Cumulative impacts have been removed from the title of Section 15 of Appendix A in the final Order.

Section 16 Comments. A commenter noted that while the U.S. EPA has no Environmental Justice (EJ) authority or guidance that specifically applies to other Federal agencies, it may be useful in this section to alert FAA staff preparing NEPA EJ sections to review the guidance EPA uses when it prepares its own NEPA documents and guidance that EPA uses when it reviews NEPA EJ sections of other Federal agencies' EIS's. FAA's response: DOT issued its own instructions (Order DOT 5610.2) instructing FAA and other DOT agencies how to assess EJ issues. FAA bases its analysis on that Order, but will use the EPA guidance mentioned in section 16.1 or other guidance as the responsible FAA official deems appropriate. In addition, EPA's Guidance has been cited in the table at the beginning of section 16.

A commenter noted that Order DOT 5610.2, Environmental Justice, refers to the Health and Human Services definition of low-income, which is limited. The draft FAA order refers to the Census Bureau's definition of low-income when it refers to the EPA and CEQ's recent guidance on environmental justice (section 16 of appendix A). The Census Bureau definition is broader. As these definitions differ, FAA should consider revising the order to note the discrepancy and address the need to do the analyses using both definitions. FAA's response: The FAA agrees that the Health and Human Services (HHS) definition (poverty guidelines) is ''limited.'' The Census Bureau's poverty threshold is inclusive of the HHS guideline, although the two numbers are essentially the same from an analytical standpoint considering the type of demographic data that is most readily available for such analyses (*i.e.*, decennial census data). Consequently, the Census Bureau's poverty threshold appears to be generally the most conservative and, therefore, appropriate for NEPA analysis of environmental justice effects, which FAA suggests follow the CEQ and EPA guidance. FAA does not believe that the small difference in the HHS and Census Bureau's numbers warrant two separate analyses of environmental justice impacts. Section 16.1(a) has been supplemented in the final Order to note the difference in the HHS and Census Bureau's numbers, and provide the responsible FAA official with the option to use what is deemed the most appropriate given the available data and circumstances of the proposed action being assessed.

A commenter notes that the purpose of section 16 is to incorporate relevant E.O.'s addressing environmental justice and children's health issues. While these are important concerns, it should be emphasized that E.O.'s relate to the faithful execution of existing laws, and do not create substantive or procedural rights and entitlements. FAA needs to make it clear that the order does not create substantive rights that are not already established by actual referenced policies or laws. FAA's response: Order 1050.1E is intended to provide practical guidance on how the FAA implements environmental requirements that apply to proposed FAA actions. The order is not intended to provide legal differentiation among laws, regulations, executive orders, etc.

A commenter believes that the FAA's adoption of ANSI/IEEE standards for electromagnetic radiation is a sensible and valid change. FAA's response: Comment noted.

Regarding section 16.2, the DOI recommends adding a sentence to the first paragraph that says, ''The environmental document also needs to address impacts to park resources and visitors where national park units are involved.'' FAA's response: Section 16.2 deals with environmental justice, children's health and safety risks, and Federal acquisition policies for private property. It does not apply to park resources and visitors.

Section 17 Comments. The DOI comments that in many large urban areas, water bodies that violate Water Quality Standards are listed by State under Clean Water Act (CWA) section 303(d), subject to approval by the EPA. These water bodies have TMDL analysis performed for the pollutant(s) in violation of standards. Certain airport pollutants may be subject to these TMDL's and could require reduction of pollutant loadings from both point and non-point sources at airport facilities. Point source reductions would be administered through CWA section 402 NPDES permits. FAA's response: Comment noted. See revision to table of statutes and regulations heading the section.

Regarding section 17.2, a commenter believes that ensuring the applicable water quality (WC) certificate is issued before FAA approves the proposed action is an unnecessary requirement. In the commenter's experience, WQ certifications are typically associated with wetland impacts and are issued by the State along with the permit for wetlands disturbance. The commenter is concerned that the requirement that a FONSI cannot be awarded without having a WQ certification in hand will significantly delay most actions that involve WQ impacts. It is not unusual for wetland impacts to occur in year 3 or 4 of a multiyear project and permit-suitable design drawings are generally not available years in advance of project implementation * * * the NEPA process would be delayed until suitable design drawings could be prepared. The commenter believes the existing requirement for description of a proposed action's design, mitigation measures, best management practices, etc. works well and is more than sufficient to provide insight into whether permit requirements will be met. The commenter contends that a requirement that a WQ certificate be issued prior to FAA approval of an action will tie the approval of an EA to receipt of various permits, significantly delay the development of airport projects, and result in the analysis of much more finalized project development plans than recommended by NEPA. The requirement should be deleted from the order. FAA's response: The commenter has identified the need for FAA to clarify the text of this paragraph. The water quality certificate referred to in the draft Order 1050.1E is the governor's water quality certificate that has been required for certain proposals under the Airport Improvement Act. The most recent Act, ''Vision 100—Century of Aviation Reauthorization Act,'' Signed into law December 12, 2003, eliminates the governor's water quality certificate, as well as the governor's air quality certificate, because they are duplicative of protections in the Clean Water Act and Clean Air Act. Accordingly, these

certificates have been eliminated from final Order 1050.1E.

Regarding section 17.2, the Wisconsin DOT comments that the last sentence should read: ''The responsible FAA Official must ensure the environmental document contains the water quality certification mentioned in section 17.1.'' FAA's response: See above response.

Section 18 Comments. A commenter notes that the section encourages a new approach to complying with NEPA and section 404 of the CWA and the commenter believes that this is a sensible approach. FAA's response: Comment noted.

Regarding section 18.1, a commenter suggests that the sentence that reads ''The purchase of credits from an approved bank signifies that the section 404 permittee has satisfied its permit required mitigation obligations'' be revised to read ''The purchase of credits from an approved bank can be used by a section 404 permittee to satisfy its permit required mitigation obligations.'' FAA's response: We concur and have adopted the suggested text in section 18.1(d) of the final Order.

Regarding section 18.1, the Department of Agriculture notes that the text states the FAA will consult with federal agencies with interest in wetlands. However, the creation or maintenance of wetlands is inconsistent with 14 CFR 139.337 and advisory circular 5200–33. Wildlife Services (WS) should be consulted regarding wetlands since this habitat may become or may already be a wildlife attractant. WS input should be considered under this section since WS assists airports in avoiding the creation of or ameliorating wildlife attractants. The FAA should add Wildlife Services to this section. FAA's response: We concur and have added a reference to Wildlife Services to section 18.2(a) of the final Order.

Section 19 Comments. The DOI comments that Wild and Scenic Rivers is an appropriate impact topic; similarly, ''National Park System Units,'' which have greater levels of protection and stronger mandates, should be a separate impact topic. FAA's response: Legislation directing all Federal agencies to take specific actions with respect to Wild and Scenic Rivers causes FAA to address these rivers under a separate impact topic to provide for clarity of the governing requirements. There is no similar legislation with respect to National Park System units per se, although a number of different pieces of legislation, regulations, and policies relate to the consideration of impacts on national parks. Impacts on national parks are addressed under several impact topics in Appendix A.

Proposed Appendix 3 Comments

The Wisconsin DOT commented that including Order 5050.4A as (proposed) Appendix 3 is desirable; however, this order has not been updated. The commenter recommends some direction to handle the areas where there are differences between the two orders until Order 5050.4A is updated. FAA's response: We concur and have added text to paragraph 5e of Chapter 1 that until Order 5050.4A is revised, if a conflict between orders occurs, Order 1050.1E takes precedence. The substance of what was to be appendix 3 was incorporated under paragraph 214 of the order. The proposed Appendix 3, now redundant with paragraph 214, is removed from the final Order.

Appendix B Comments

Regarding paragraph 2f, a commenter believes that this paragraph needs to clearly state that in third party contract situations, FAA maintains the same oversight control as it would if FAA were paying the contractor. FAA's response: We concur and have added clarification to this effect to paragraph 2b of Appendix B.

Regarding paragraph 2d, a commenter believes that editorial work is needed. The commenter notes and appreciates the efforts of the FAA to clarify conflict of interest for third-party contractors. The order should reflect guidelines for identifying potential conflict of interest, as well as the requirements to be placed on contracting consultants with respect to eligibility for follow-on work or coincidental work on independent projects. FAA's response: The primary guidance in CEQ regulations and ''Forty Most Asked Questions'' is cited in Appendix B. Otherwise, the commenter is asking for a greater level of detail than is appropriate for Order 1050.1E.

In addition to the foregoing comments, many comments were received identifying typographical errors, missing or incorrect paragraph identifiers, incorrect internal references, and other minor grammatical inconsistencies. All such corrections are adopted unless stated otherwise in this preamble.

Issued in Washington DC on June 8, 2004.

Carl E. Burleson,

Director, Office of Environment and Energy.

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