DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA–2013–0685]

Final Order 1050.1F Environmental Impact: Policies and Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) has revised its procedures for implementing the National Environmental Policy Act (NEPA) by issuing Order 1050.1F, *Environmental Impacts: Policies and Procedures.* Order 1050.1F cancels Order 1050.1E, *Environmental Impacts: Policies and Procedures.* The revisions in Order 1050.1F include reorganization of the Order to make it easier to use, clarification of requirements, additions to the list of Categorical Exclusions (CATEXs), updating of policies and procedures to be consistent with recent guidance, addition of provisions for emergency actions, and updating of terminology to incorporate the Next Generation Air Transportation System (NextGen). The FAA issued a notice and request for comment in the **Federal Register** on August 14, 2013 (78 FR 49596). All comments received were considered in the issuance of the final Order. This notice summarizes the changes made to Order 1050.1E and includes responses to substantive comments received.

DATES: Order 1050.1F is effective July 16, 2015.

SUPPLEMENTARY INFORMATION: NEPA and the implementing regulations promulgated by the Council on Environmental Quality (CEQ) (40 Code of Federal Regulations [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 and 1507.3 require Federal agencies to develop and, as needed, revise implementing procedures consistent with the CEQ Regulations.

The FAA's previous NEPA Order, Order 1050.1E, *Environmental Impacts: Policies and Procedures,* provided the FAA's policy and procedures for compliance with (a) the CEQ Regulations for implementing the procedural provisions of NEPA; (b) Department of Transportation (DOT) Order 5610.1C, *Procedures for Considering Environmental Impacts,* and (c) other applicable environmental laws, regulations, Executive Orders, and policies. The FAA proposed to replace Order 1050.1E with Order 1050.1F and incorporate certain changes based on notice and request for comment published in the **Federal Register** (78 FR 49596, August 14, 2013). All comments received were considered in the issuance of the final Order 1050.1F.

This notice provides a synopsis of the changes adopted including those additional changes resulting from comments received. The Order is distributed throughout the FAA by electronic means only. The Order is available for viewing and downloading by all interested persons at *http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/.* If the public is not able to use an electronic version, they may obtain a photocopy of the Order, for a fee to cover the cost of reproducing copies, by contacting the FAA's rulemaking docket at the FAA Office of the Chief Counsel, Attn: Rules Docket (AGC–200)—Docket No. FAA–2013–0685, 800 Independence Avenue SW., Washington, DC 20591.

In November 2014, DOT issued guidance on implementing Section 1319 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), 42 U.S.C. 4332a. The guidance, which applies to all DOT components, including the FAA, is available at *http://www.dot.gov/sites/dot.gov/files/docs/MAP-21_1319_Final_Guidance.pdf.* Section 1319(a) of MAP–21, which relates to the use of errata sheets for environmental impact statements and largely mirrors the CEQ regulations on that topic (see 40 CFR 1503.4(c)), was already reflected in the draft Order 1050.1F published for public comment. The FAA has made minor changes to the final Order 1050.1F to ensure it is not in conflict with Section 1319(b) of MAP–21, which requires DOT, to the maximum extent practicable, to expeditiously develop a single document that consists of a final Environmental Impact Statement (EIS) and a Record of Decision (ROD), unless certain conditions exist. The FAA will be issuing additional guidance on implementing Section 1319(b) of MAP–21 and will update Order 1050.1F as appropriate to reflect that guidance. In the meantime, the FAA will comply with Section 1319(b) to the extent applicable.

Synopsis of Changes From Order 1050.1E: The final Order 1050.1F incorporates all changes proposed in 78 FR 49596. Additional changes and clarifications were added to the final Order in response to comments received as a result of the **Federal Register** notice and deliberative discussions with the Office of the Secretary of Transportation, CEQ, and internal elements of the FAA. References throughout the Preamble refer to paragraph references for Order 1050.1F unless otherwise noted. These changes include:

The information contained in Appendix A of FAA Order 1050.1E, *Analysis of Environmental Impact Categories,* has been moved to the 1050.1F Desk Reference. This was done to allow for updates to the 1050.1F Desk Reference, as needed. Any FAA-specific analysis, modeling, and documentation requirements that were contained in Appendix A of FAA Order 1050.1E have been moved to Appendix B of FAA Order 1050.1F, *Federal Aviation Administration Requirements for Assessing Impacts Related to Noise and Noise-Compatible Land Use and Section 4(f) of the Department of Transportation Act (49 U.S.C. 303).*

The Order has been restructured to reduce redundancies and improve clarity. Order 1050.1F is divided into eleven chapters as opposed to the five chapters of 1050.1E. The numbering and structure are changed to more closely follow FAA Order 1320.1, *FAA Directives Management.* In addition, systematic editorial changes have been applied to ensure 1050.1F is consistent with the FAA's plain language guidelines as established in FAA Order 1000.36, *FAA Writing Standards* (*e.g.,* changes use of the term ''shall'' to ''should'' or ''must,'' as appropriate).

The language referring to the applicability of the Order and CEQ Regulations to FAA actions has been modified for clarity to state ''[t]he provisions of this Order and the CEQ Regulations apply to actions directly undertaken by the FAA and to actions undertaken by a non-Federal entity where the FAA has authority to condition a permit, license, or other approval.'' This change has been made throughout the Order, where applicable.

The FAA's policy statement (see Paragraph 1–8) has been updated to include the FAA's goals of ensuring timely, effective, and efficient environmental reviews and includes a discussion of NextGen. The policy reflects established expedited environmental review procedures and processes including the legislative provisions in the *FAA Modernization and Reform Act of 2012, Public Law 112–95 (''FAA Reauthorization of 2012'' or ''the Act'')* to expedite the

environmental review process for certain air traffic procedures.

The titles and roles of FAA Lines of Businesses and Staff Offices (LOB/SOs) have been updated to reflect changes to the FAA's organizational structure and responsibilities since publication of FAA Order 1050.1E (see Paragraph 2–2.1.b). These revisions include: Removing Aviation Policy, Planning, and Environment (AEP) and International Aviation (AIP), since these divisions have been combined to form a new office known as Policy, International Affairs and Environment (APL); revising Office of Financial Services (ABA) to Office of Finance and Management (AFN), revising Regulation and Certification (AVR) to Aviation Safety (AVS); revising the text to reflect that the Office of Corporate Learning and Development is now located under Human Resource Management (AHR); and adding the staff office NextGen (ANG).

The Order breaks out the roles and responsibilities of the FAA (see Paragraph 2–2.1), applicants (see Paragraph 2–2.2), and contractors (see Paragraph 2–2.3) into separate paragraphs for easy reference and transparency.

A paragraph on the roles and responsibilities under the State Block Grant Program has been added to the Order (see Paragraph 2–2.1.e). This language is also currently located in the Office of Airports NEPA procedures in FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Projects,* but has been added to Order 1050.1F as it involves multiple FAA Lines of Businesses LOBs.

The similarities and differences between Environmental Assessments (EAs) and EISs are clarified throughout Order 1050.1F. The terminology ''EIS or EA'' has been replaced with ''NEPA documentation'' when guidance would apply to either type of document to help clarify Paragraph 206a of Order 1050.1E, which states that requirements that apply to EISs may also be used for the preparation of EAs. Alternatively, when guidance is specific to an EA or to an EIS, but not to both, the appropriate type of document is stated.

A discussion of Environmental Management Systems (EMS) has been added to highlight the importance of EMS and the potential benefit of aligning NEPA with the elements of EMS (see Paragraph 2–3.3).

The discussion on mitigation has been reorganized and updated to be consistent with CEQ's guidance on *Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,* 76 FR 3843 (January 21, 2011) (see Paragraphs 2–3.6, 4–4, 6–2.3, and 7–1.1.h). The proposed changes also clarify which projects may warrant environmental monitoring and the type and extent of such monitoring.

The list of actions normally requiring an EA has been modified to reflect the FAA's experience.

Actions newly identified as normally requiring an EA are:

Paragraph 3–1.2.b(13): Establishment or modification of an Instrument Flight Rules Military Training Route (IR MTR); and

Paragraph 3–1.2.b(16): Formal and informal runway use programs that may significantly increase noise over noise sensitive areas.

Actions normally requiring an EA that have been amended include:

Paragraph 3–1.2.b(2) modifies the language of 401b of 1050.1E to include all types of certificates for aircraft types for which environmental regulations have not been issued, and new amended engine types for which emission regulations have not been issued where an environmental analysis has not been prepared in connection with a regulatory action.

Paragraph 3–1.2.b(10), formerly 401k of Order 1050.1E, was changed to limit the typical EA to new commercial service airport locations that would not be located in a Metropolitan Statistical Area (MSA). In addition, the description of a new runway was limited by stating that the new runway is at an existing airport that is not located in an MSA. Major runway extension projects were removed from this list and added to the list of actions that typically require an EIS. This is because the definition of major runway extension includes runway extensions that cause a significant adverse environmental impact.

Paragraph 3–1.2.b(11) changes Paragraph 401l of Order 1050.1E to provide more clarity when the issuance of operations specifications normally requires an EA; specifically, any approval of operations specifications that may significantly change the character of the operational environment when authorizing passenger or cargo service, or authorizing an operator to serve an airport with different aircraft when that service may significantly increase noise, air, or other environmental impacts, normally requires an EA.

Paragraph 3–1.2.b(12) combines Paragraphs 401m and 401n from Order 1050.1E and includes a caveat that certain procedures may be categorically excluded under new legislative CATEXs in the *FAA Reauthorization of 2012.*

Paragraph 3–1.2.b(14) modifies Paragraph 401p of Order 1050.1E to remove the four requirements for the notice of proposed rulemaking for Special Use Airspace (SUA) projects since these criteria are not based on environmental impacts, but on the process for establishing a SUA. The new paragraph describes SUA actions as normally requiring an EA (unless otherwise explicitly listed as an advisory action (see Paragraph 2–1.2.b, Advisory Actions) or categorically excluded (see Paragraph 5–6, the FAA's List of Approved Categorical Exclusions)).

Paragraph 3–1.2.b(15) modifies Paragraph 401c of Order 1050.1E to clarify the type of commercial space launch actions that normally require an EA. The proposed paragraph states issuance of any of the following requires an EA: (a) A commercial space launch site operator license for operation of a launch site at an existing facility on disturbed ground where little to no infrastructure would be constructed (*e.g.,* co-located with a Federal range or municipal airport); or (b) A commercial space launch license, reentry license, or experimental permit to operate a vehicle to/from an existing site.

The Order has added the following examples of actions normally requiring an EIS (see Paragraph 3–1.3.b):

(1) Unconditional Airport Layout Plan (ALP) approval of, or federal financial participation in, the following categories of airport actions:

(a) Location of a new commercial service airport in an MSA;

(b) A new runway to accommodate air carrier aircraft at a commercial service airport in an MSA; and

(c) Major runway extension

(2) Issuance of a commercial space launch site operator license, launch license, or experimental permit to support activities requiring the construction of a new commercial space launch site on undeveloped land.

The Order expands the discussion of programmatic NEPA documents and tiering to provide more guidance on the use of programmatic NEPA documents (see Paragraph 3–2). The discussion is consistent with CEQ's guidance on *Effective Use of Programmatic NEPA Reviews (December 18, 2014) at http://www.whitehouse.gov/sites/default/files/docs/effective_use_of_programmatic_nepa_reviews_final_dec2014_searchable.pdf.*

A statement was added to the Order that FAA LOB/SOs will, whenever possible, use the FAA NEPA Database to track projects and make final documents

available to others in the FAA (see Paragraph 3–3).

A new chapter was added to describe environmental impact categories, significance thresholds, and factors to consider in determining the significance of environmental impacts (see Chapter 4). The environmental impact categories were originally contained in Appendix A of Order 1050.1E. There are some additions and modifications to the list of environmental impact categories. Climate has been added to the list of impact categories to be considered in the FAA's NEPA documents. Climate was previously addressed in FAA Order 1050.1E Guidance Memo #3, *Considering Greenhouse Gases and Climate under the National Environmental Policy Act (NEPA): Interim Guidance.* Noise and noise-compatible land use have been combined into a single environmental impact category to provide better context and clarity. The remaining land use topics are discussed as a separate category. Fish, Wildlife, and Plants has been renamed Biological Resources. Light Emissions and Visual Impacts has been renamed Visual Effects. Water Resource impacts have been combined to include water quality, wetlands, floodplains, surface waters, groundwater, and wild and scenic rivers. Construction and secondary impacts have been removed as separate categories and instead are to be analyzed within each applicable environmental impact category. Further guidance on environmental impact category analysis is contained within the 1050.1F Desk Reference.

A table has been provided, Exhibit 4–1, that summarizes the significance thresholds that were formerly described under individual environmental impact categories in Appendix A of FAA Order 1050.1E. This table also includes factors to consider in making determinations of significant impacts. These factors to consider are not exhaustive. There may also be other factors that should be evaluated when making a determination of significance. There are three modifications to the significance thresholds found in Appendix A of Order 1050.1E: (1) Air Quality threshold includes ''or to increase the frequency or severity of any such existing violations'' to help clarify that increase in the frequency or severity of any existing violations would also be considered a trigger; (2) Surface Waters now includes ''contaminate a public drinking water supply such that public health may be adversely affected'' as a threshold, and (3) Groundwater includes ''contaminate an aquifer used for public water supply such that public health may be adversely affected'' as a threshold. (See Exhibit 4–1, Significance Determination for FAA Actions).

The list of extraordinary circumstances for CATEXs (see Paragraph 5–2.b) has been modified. National marine sanctuaries and wilderness areas have been added to the list of resources that must be considered in evaluating actions for extraordinary circumstances that would preclude the use of a CATEX for a proposed action. The Order makes other text revisions, including modifying (1) the description of wild and scenic rivers to be consistent with CEQ's memorandum *Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory* (August 10, 1980); and (2) the description of hazardous materials to specify projects likely to cause environmental contamination by hazardous materials, or likely to disturb an existing hazardous material contamination site such that new environmental contamination risks are created.

The FAA's guidance regarding CATEX documentation has been updated to be consistent with CEQ's 2010 Guidance on *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act,* 75 FR 75628 (December 6, 2010) (hereafter referred to as ''CEQ's CATEX Guidance'') (see Paragraph 5–3). These updates include: Clarifying when and what level of documentation is needed in the application of a CATEX and explaining what to include in CATEX documentation.

A new paragraph has been added to the Order providing information on combining a decision document with a CATEX (CATEX/ROD) (see Paragraph 5–3.e). CATEX/RODs are not commonly used, but may be advisable in certain circumstances.

Guidance on public notification of CATEXs has been added, consistent with CEQ's CATEX Guidance (see Paragraph 5–4).

New CATEXs have been added to the Order for actions which the FAA has determined do not have the potential to significantly affect the environment individually or cumulatively, absent extraordinary circumstances. The following CATEXs have been added:

Paragraph 5–6.3.i adds a CATEX for the unconditional approval of an ALP, Federal financial assistance, or FAA projects for the installation of solar or wind powered energy, provided the installation does not involve more than three total acres and would not have the potential to cause significant impacts on bird or bat populations.

Paragraph 5–6.4.bb adds a CATEX for an unconditional ALP approval or Federal financial assistance for actions related to a purchase of land for a runway protection zone (RPZ) or other aeronautical purpose, provided there is no land disturbance.

Paragraph 5–6.4.cc adds a CATEX for an unconditional ALP approval or Federal financial assistance to permanently close a runway and use it as a taxiway at small, low activity airports provided any changes to lights or pavement would be on previously developed airport land.

Paragraph 5–6.4.dd adds a CATEX for FAA construction, reconstruction or relocation of a non-Radar, Level 1 air traffic control tower at an existing visual flight rule (VFR) airport, or FAA unconditional approval of an ALP and/or Federal funding provided the action would occur on a previously disturbed area of the airport and not: (1) Cause an increase in the number of aircraft operations, a change in the time of aircraft operations, or a change in the type of aircraft operating at the airport; (2) cause a significant noise increase in noise sensitive areas; or (3) cause significant air quality impacts.

Paragraph 5–6.4.ee adds a CATEX for environmental investigation of hazardous waste or hazardous substance contamination on previously developed land provided the work plan or Sampling and Analysis Plan (SAP) for the project integrates current industry best practices and addresses, as applicable, surface restoration, well and soil boring decommissioning, and the collection, storage, handling, transportation, minimization, and disposal of investigation derived wastes and other Federal or state regulated wastes generated by the investigation. The work plan or SAP must be coordinated with and, if required, approved by the appropriate or relevant governmental agency or agencies prior to commencement of work.

Paragraph 5–6.4.ff adds a CATEX for remediation of hazardous wastes or hazardous substances impacting approximately one acre in aggregate surface area provided remedial or corrective actions must be performed in accordance with an approved work plan (*i.e.,* remedial action plan, corrective action plan, or similar document) that documents applicable current industry best practices and addresses, as applicable, permitting requirements, surface restoration, well and soil boring decommissioning, and the minimization, collection, any necessary associated on-site treatment, storage, handling, transportation, and disposal of Federal or state regulated wastes. The

work plan must be coordinated with, and if required, approved by, the appropriate governmental agency or agencies prior to the commencement of work. As a matter of policy, actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and corrective actions under the Resource Conservation and Recovery Act (RCRA) generally do not require separate analysis under NEPA or the preparation of a NEPA document. The FAA will rely on CERCLA processes for environmental review of actions to be taken under CERCLA, and will address NEPA values to the extent practicable. As a matter of law, there is a statutory conflict between NEPA and CERCLA; NEPA, therefore, does not apply to CERCLA cleanup actions. The FAA may rely on the CERCLA process for RCRA corrective action if the action is to be taken under a compliance agreement for an FAA site on the CERCLA National Priorities List that integrates the requirements of RCRA and CERCLA to such an extent that the requirements are largely inseparable in a practical sense.

Paragraph 5–6.5.f adds a CATEX for actions to increase the altitude of SUA.

In addition, two legislative CATEXs, provided in Section 213(c) of the *FAA Reauthorization of 2012,* are added (see Paragraphs 5–6.5.q and 5–6.5.r). One allows for a CATEX for Area Navigation/Required Navigation Performance (RNP) procedures proposed for core airports and any medium or small hub airports located within the same metroplex area that are identified by the Administrator, and for RNP procedures proposed at 35 non-core airports selected by the Administrator, subject to extraordinary circumstances. The second provides a CATEX for any navigation performance or other performance based navigation procedure (PBN) developed, certified, published, or implemented that, in the determination of the Administrator, would result in measurable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis as compared to aircraft operations that follow existing instrument flight rules procedures in the same airspace irrespective of the altitude.

Four CATEXs have been substantially modified:

Paragraph 5–6.4.e (formerly Paragraph 310e of Order 1050.1E), is modified to include widening of a taxiway, apron, loading ramp, or runway safety area (RSA) including an RSA using Engineered Material Arresting System (EMAS), or widening of an existing runway.

Paragraph 5–6.4.i (formerly Paragraph 310i of Order 1050.1E) is modified to allow for financial assistance for or unconditional approval of an ALP for the demolition or removal of non-FAA owned buildings and structures on airports except those of historic, archeological, or architectural significance as officially designated by Federal, state, tribal or local governments. This CATEX also adds the expansion of a facility or structure where no hazardous substance contamination or contaminated equipment is present on the site.

Paragraph 5–6.4.u (formerly Paragraph 310u in Order 1050.1E) is expanded to include unconditional approval of an ALP for the installation, repair, or replacement of on-airport aboveground storage tanks or underground storage tanks. The CATEX further clarifies that the closure and removal applies to the fuel storage tank, and remediation applies to the contaminants resulting from the use of the fuel storage tank. It also clarifies that distribution systems are not within the scope of the CATEX.

Paragraph 5–6.5.l (formerly Paragraph 311l in Order 1050.1E) is modified to allow for Federal financial assistance, unconditional ALP approval, or other FAA action to establish a displaced threshold on an existing runway. It further states that removal or establishment of a displaced threshold is allowed within the scope of the CATEX provided the action does not require establishing or relocating an approach light system that is not on airport property or an instrument landing system.

Several CATEXs have been slightly modified as follows:

Paragraph 5–6.2.c (formerly Paragraph 308c in Order 1050.1E) is modified to include operating certificates. This is a clarification since these certificates are similar to the other types of certificates already contained in Paragraph 308c of Order 1050.1E.

Paragraph 5–6.2.d (formerly Paragraph 308d in Order 1050.1E) has been modified to clarify that [these types of actions] do not have the potential to cause significant impacts.

Paragraph 5–6.3.h (formerly Paragraph 309h in Order 1050.1E) is revised for clarity. The terminology ''launch facility'' is changed to ''commercial space launch site.'' The FAA regulations at 14 CFR part 107, *Airport Security,* have been withdrawn and no longer apply. Therefore, reference to this regulatory provision has been removed.

Paragraph 5–6.4.f (formerly Paragraph 310f in Order 1050.1E) is modified to include hangers and t-hangers. Hangers and t-hangers are included in this CATEX so long as a review of extraordinary circumstances demonstrates that any increase in aircraft does not contribute to significant noise increases in noise sensitive areas or significant air impacts.

Paragraph 5–6.4.h (formerly Paragraph 310h in Order 1050.1E) has been clarified to include non-aeronautical uses at existing airports or commercial space launch sites.

Paragraph 5–6.5.b (formerly Paragraph 311b in Order 1050.1E) adds clarification that this CATEX for procedural actions applies to establishment of jet routes as they are one type of Federal airway.

Paragraph 5–6.5.c (formerly Paragraph 311c in Order 1050.1E) adds the example ''reduction in times of use (*e.g.,* from continuous to intermittent, or use by a Notice to Airmen (NOTAM))'' to the list of ''such as'' actions. This clarifies that actions to return all or part of SUA to the National Airspace System (NAS) include reduction in times of use.

Paragraph 5–6.5.g (formerly Paragraph 311g in Order 1050.1E) is slightly modified to include RNP. It also specifies that a Noise Screening Tool or other FAA-approved environmental screening methodology should be used.

Paragraph 5–6.5.h (formerly Paragraph 311h in Order 1050.1E) is slightly modified to include ''modification'' of helicopter routes to clarify that establishment of helicopter routes also includes modification of these routes as long as they channel helicopter activity over major thoroughfares. The FAA has also added ''would not have the potential to significantly increase noise over noise sensitive areas'' to highlight significant increase in noise as a specific extraordinary circumstance to be aware of when applying this CATEX.

Paragraph 5–6.5.i (formerly Paragraph 311i in Order 1050.1E) updates reference to a Noise Screening Tool or other FAA-approved environmental screening methodology.

Paragraph 5–6.6.b is modified to provide clarity that the CATEX applies to an aerobatic practice area containing one aerobatic practice box in accordance with 1050.1E Guidance Memo #5, *Clarification of FAA Order 1050.1 CATEX 312b for Aerobatic Actions.*

The discussion of EA format and process has been revised to simplify the explanation of each element and clarify that an EA should be concise and focused and generally should not be as detailed as an EIS (see Paragraphs 6–2.1 and 6–2.2). As this discussion has been reduced in detail, there are cross-

references to the corresponding EIS sections for EAs that may need to be more substantial.

The language required to be included in notices soliciting public comment on draft EAs and draft EISs has been revised, stating that personal information provided by commenters (*e.g.,* addresses, phone numbers, and email addresses) may be made publicly available (see Paragraphs 6–2.2.g and 7–1.2.d(1)(a)).

The Order adds two paragraphs on the use of errata sheets when the modifications to a draft EA or draft EIS are minor and confined to factual corrections or explanations of why the comments do not warrant additional agency response (see Paragraphs 6–2.2.i and 7–1.2.f).

A new paragraph has been added to explain the conditions under which the FAA may choose to terminate preparation of an EIS and to clarify what steps the FAA should take when this situation occurs (see Paragraph 7–1.3).

The timing of a decision on a proposed action for which an EIS is prepared has been revised slightly to allow for the joint issuance of a Final EIS and ROD pursuant to Section 1319(b) of Map–21 (see Paragraph 7–1.2.j).

The requirements relating to review of other agencies' NEPA documents and FAA's adoption of other agencies' NEPA documents have been clarified (see Paragraphs 8–1 and 8–2). Please note the discussion of recirculation requirements for EISs to highlight that there are some circumstances in which adopted documents must be recirculated (see Paragraph 8–2.e).

A discussion of FAA policy with respect to consideration of transboundary impacts resulting from FAA actions has been added (see Paragraph 8–5). This was added to differentiate analysis of impacts to other countries versus FAA actions that occur in other countries. This is not intended to create a requirement to discuss global climate change impacts from FAA actions.

The discussion of international actions has been modified to be consistent with DOT Order 5610.1, including guidance on coordination within the FAA/DOT and U.S. State Department when communication with foreign governments is needed (see Paragraph 8–6).

The alternative process to consider environmental impacts before taking actions necessary to protect the lives and safety of the public in emergency circumstances has been amended. Alternative arrangements are limited to actions necessary to control the immediate impacts of an emergency. Order 1050.1F expands this paragraph to provide for emergency procedures when a CATEX or EA would be the appropriate level of NEPA review (see Paragraph 8–7).

Provisions relating to written re-evaluations have been modified and clarified. The FAA has added language requiring a written re-evaluation before further FAA approval may be granted for an action if, after the FAA has approved an EA or EIS for the action, there are changes to the action, or new circumstances or information, that could trigger the need for a supplemental EA or EIS, or all or part of the action is postponed beyond the time period analyzed in the EA or EIS. The FAA added a statement to explain that written re-evaluations may be prepared in other circumstances and added a discussion of combining decision documents with written re-evaluations (*i.e.,* a ''Written Re-evaluation/ROD'') (see Paragraph 9–2).

The section on Supplemental Environmental Impact Statements was modified to incorporate Section 1319(b) of Map–21 (see Paragraph 9–3).

The provisions relating to review, approval, and signature authority for FAA NEPA documents have been consolidated (see Chapter 10).

Paragraph 11–2 clarifies the authority of various parties and is consistent with other FAA Orders (see Paragraph 11–2).

Provisions relating to explanatory guidance have been amended to show a two-step process for coordination and review with the FAA's Office of Environment and Energy (AEE) and Office of Chief Counsel (AGC) (see Paragraph 11–4).

The definitions paragraph has been modified to add ''extraordinary circumstances,'' ''NEPA lead,'' ''special purpose laws and requirements,'' and ''traditional cultural properties.'' ''Environmental Due Diligence Audit'' has been deleted because this term is no longer used in FAA Order 1050.1F. Definitions of ''environmental studies,'' ''approving official,'' and ''decisionmaker'' are revised to reflect current practice. The definition of ''human environment'' was modified to more closely align with the CEQ Regulations. The term ''launch facility'' is changed to ''commercial space launch site'' to be consistent with 14 CFR part 420. The definition of ''noise sensitive area'' is revised to include a reference to Table 1 of 14 CFR part 150 rather than Appendix A of FAA Order 1050.1E, to provide context in light of the removal of Appendix A from Order 1050.1F. ''Major Federal action'' was added to the list of definitions as a cross reference to the CEQ Regulations (See Paragraph 11–5.b).

Disposition of Comments

The FAA appreciates the thoughtful responses to its request for comments on the draft Order 1050.1F, *Environmental Impacts: Policies and Procedures.* The FAA received more than 800 comments. Commenters included private citizens, elected officials, corporations, trade associations, and Federal and state agencies. Those comments that raised policy or substantive concerns within the scope of the order have been grouped thematically, summarized, and addressed in this Notice. The term ''comment'' used in this Notice refers to each individual issue raised by a commenter, thus, numerous comments may have been identified within the correspondence submitted by a commenter. The comments that address similar themes or issues, even if submitted by different commenters, have been combined for response where possible. References to specific paragraphs in this Preamble refer to the revised paragraph and subparagraph numbering of the final Order. Due to the number of comments received on helicopters and the two legislative CATEXs, these comments are addressed after the general Order 1050.1F comments.

I. General Order 1050.1F Comments

Several commenters were concerned that changes in Order 1050.1F would relax requirements for environmental review or public involvement including concerns that the Order exempts the FAA from further environmental studies and the Order evades community and general stakeholder input.

FAA Order 1050.1F provides the FAA's policies and procedures for compliance with NEPA. Under NEPA, Federal agencies must disclose significant impacts of their actions to the public. Order 1050.1F has not relaxed any standards and is consistent with NEPA and the CEQ Regulations. Actions that cause significant impacts will require preparation of an EIS and compliance with the associated public involvement requirements before being implemented.

Chapter 1: General

Paragraph 1–6. Related Publications

One commenter was concerned with potential conflicts between Order 1050.1F and other FAA environmental guidance documents and Orders (i.e., the Office of Airport's Order 5050.4B and the accompanying Environmental Desk Reference for Airport Actions).

AEE developed Order 1050.1F and its accompanying 1050.1F Desk Reference in a workgroup with all LOB/SOs, including the FAA's Office of Airports, to ensure that any modifications are consistent throughout the agency. As specified in Paragraph 11–4, Order 1050.1F supersedes any inconsistent explanatory guidance and FAA LOB/SOs must update any current explanatory guidance to be consistent with Order 1050.1F. If any conflicts exist, Order 1050.1F would take precedence until other explanatory guidance is revised.

The Office of Airports will be updating Order 5050.4B and the *Environmental Desk Reference for Airport Actions* to provide guidance on airport specific projects consistent with Order 1050.1F. The *Environmental Desk Reference for Airport Actions* will not be discontinued because it contains specific information that is relevant to airport projects that is not contained in 1050.1F Desk Reference.

Several commenters requested that the 1050.1F Desk Reference be made available to the public for comment and stated that they could not provide adequate comments on the Order until the Desk Reference was made available for comment.

The FAA recognizes the public's interest in reviewing and providing comments on the 1050.1F Desk Reference. The 1050.1F Desk Reference is guidance material intended to assist FAA employees with NEPA implementation. Although the Order refers the reader to the 1050.1F Desk Reference in numerous places, this is to identify where additional guidance is available regarding significant impact determinations, information on FAA-approved models, and compliance with other environmental laws, regulations and requirements so that the NEPA practitioner can more easily prepare an adequate analysis under NEPA for each environmental impact category.

The FAA undertook a careful review of Appendix A from Order 1050.1E when determining the content that could reasonably and appropriately be placed in the desk reference. Any requirements of the FAA's NEPA procedures that were contained in Appendix A of Order 1050.1E and that do not originate from an independent law, regulation, executive order, or other directive external to the FAA, such as requirements associated with noise analysis, have been retained in the main body of or appendices to Order 1050.1F. Content that has been removed from the Order and placed in the desk reference is limited to explanatory or technical guidance intended to assist FAA employees with implementation of NEPA and other environmental laws, regulations and requirements. As such, there are no FAA NEPA review requirements that are solely located in the desk reference, and as a result, the FAA has provided interested members of the public an opportunity to make meaningful comment on the FAA's NEPA policies and procedures as embodied in Order 1050.1F. Although the FAA is not providing a formal comment period on the 1050.1F Desk Reference, the users of the 1050.1F Desk Reference can submit comments on it through the FAA Web site at *http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/.* These comments will be reviewed and incorporated into the 1050.1F Desk Reference on an ongoing basis, as needed.

One commenter stated that the Administrative Procedure Act (APA) and the FAA Policy on Public Involvement require that the FAA make the 1050.1F Desk Reference available to the public under notice and comment procedures.

The APA's requirements regarding notice and comment for agency rulemaking are not applicable to the Order 1050.1F Desk Reference. Content that has been placed in the Order 1050.1F desk reference is limited to explanatory or technical guidance intended to assist FAA employees with NEPA implementation, and does not contain any requirements or obligations that are not otherwise contained in Order 1050.1F or other statutes, regulations, or directives. As a result, the comment period provided for Order 1050.1F was adequate, as concurrent review of the Order 1050.1F desk reference was not necessary to facilitate review of the Order.

The APA does not require that guidance documents be publicly available under notice and comment procedures. The 1050.1F Desk Reference is a guidance document that provides information to NEPA practitioners on how to comply with environmental regulations, Orders, and requirements in the NEPA setting.

The FAA is unaware of an ''FAA Policy on Public Involvement'' and can only assume that the commenter is referring to the *Community Involvement Policy Statement* (April 17, 1995). This policy statement was issued almost 20 years ago, but is still valid. The FAA regards community involvement as an essential element in the development of programs and decisions that affect the public. The 1050.1F Desk Reference is available to the public. However, it will not undergo a formal review and comment period since it is a guidance document that may need to be updated as other environmental laws and regulations are amended. Individuals may submit comments on the Desk Reference through the FAA Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/.* All comments will be considered on an ongoing basis for future editions of the 1050.1F Desk Reference.

Two commenters expressed concern that the 1050.1F Desk Reference will not be updated as stated, citing the fact that the Office of Airports made their Environmental Desk Reference for Airport Actions separate from their Order 5050.4B in 2006 for the same reasons and it has never been updated.

The FAA understands the concerns of the commenter. To help improve the efficiency and ease of updating the 1050.1F Desk Reference, the Office of Environment and Energy has implemented a process for receiving comments on the 1050.1F Desk Reference and will review and update the 1050.1F Desk Reference on a regular basis to address any concerns and changes that are needed. The length of time between updates to the 1050.1F Desk Reference will be dictated by any changes to special purpose laws, regulations, or other requirements and/or applicable guidance and the content of comments received on the 1050.1F Desk Reference.

One commenter stated that by removing the information within Appendix A to a Desk Reference, this could limit the ability to cite to this material appropriately in NEPA documents. The commenter encouraged the FAA to note what authority to cite in NEPA documents.

The 1050.1F Desk Reference provides guidance to FAA personnel on how to prepare a NEPA document. The FAA encourages preparers of documents to reference the appropriate underlying statutes, regulations, or other authorities for the analytical and disclosure requirements that are described in the 1050.1F Desk Reference. The 1050.1F Desk Reference provides additional guidance on the appropriate situations and manner for citing the 1050.1F Desk Reference. It is important to note that if there is an underlying statutory, regulatory, or other requirement, the underlying authority should be cited instead of the 1050.1F Desk Reference.

One commenter stated that not allowing public review of the 1050.1F Desk Reference is not proper policy because this information contains FAA requirements concerning noise and thus

should be available to the public for review.

Appendix B of Order 1050.1F is comprised of excerpts from the 1050.1F Desk Reference that contain FAA-specific requirements on noise analysis. Appendix B was made available to the public during the public comment review period of this Order. When developing the public draft of Order 1050.1F, the FAA carefully reviewed not only the noise chapter, but also the Section 4(f) chapter of the 1050.1F Desk Reference to ensure that any FAA-specific requirements that are not already based on other special purpose laws are contained within Appendix B of draft Order 1050.1F, and thus made available for public review and comment.

One commenter stated to the extent that FAA places new, substantive requirements in the 1050.1F Desk Reference that otherwise would trigger full notice and comment procedures, the 1050.1F Desk Reference should be subjected to such review.

Although the 1050.1F Desk Reference does contain substantive requirements, the majority of these requirements are based on authorities outside of the FAA (*i.e.,* the Clean Air Act, the Clean Water Act, National Historic Preservation Act, etc.). It is not appropriate to solicit notice and comment on these authorities. To the extent that there are FAA-specific requirements within the 1050.1F Desk Reference, these have been placed within Appendix B of Order 1050.1F. These include FAA-specific requirements for noise and Section 4(f). Appendix B was published as part of the draft Order 1050.1F to allow for public review and comment.

Two commenters were concerned that important information that was previously contained in Order 1050.1E has been left out of this Order and without review of the 1050.1F Desk Reference they could not provide meaningful comments. One commenter stated, as an example, Chapter 4 seems to leave out light emissions, cumulative impacts, construction, and secondary (induced) impacts.

Throughout the updates to Order 1050.1, the FAA has carefully reviewed this Order to ensure that information contained in Order 1050.1E has been included in either Order 1050.1F and/or the 1050.1F Desk Reference, as appropriate.

As stated in Paragraph 1–10.13, the FAA has made several changes to the environmental impact categories. One of which was combining light emissions with the chapter on visual impacts. The FAA has changed the title of visual effects in the draft Order 1050.1F to ''visual effects (including light emissions)'' in this final version of Order 1050.1F, to ensure clarity that light emissions is included within the visual impacts.

As Paragraph 1–10.13 also stated, the FAA has eliminated construction and secondary impacts as separate environmental impact categories and these are now discussed within each relevant environmental impact category. To address this comment, the FAA has added a statement to Paragraph 4–1 to highlight this.

Cumulative impacts is not considered a specific environmental impact category, which is why it is not listed in Paragraph 4–1; however, there is a chapter devoted to cumulative impacts in the 1050.1F Desk Reference.

One commenter requested that the 1050.1F Desk Reference contain specific examples of air traffic actions since the current Desk Reference, Environmental Desk Reference for Airport Actions, focuses on airport actions.

The *Environmental Desk Reference for Airport Actions* referred to by the commenter was prepared by and for the Office of Airports and therefore is appropriately focused on airport actions. The 1050.1F Desk Reference provides guidance for all the FAA LOB/SOs to utilize and is general in nature. Specific examples are included where applicable. The FAA LOB/SOs were encouraged to provide specific examples related to their programs that would be useful to include in the 1050.1F Desk Reference.

Paragraph 1–8. Federal Aviation Administration Policy

One commenter stated that since there was an emphasis on expedited reviews in the policy section, there should be a paragraph in Order 1050.1F on the process for expedited reviews or references to those applicable expedited steps in the policy statement.

The paragraph referenced by the commenter is the FAA's policy statement for this Order. The policy statement is general in nature and provides an overview of the FAA's policies in NEPA. Specific expedited review processes are generally LOB specific and therefore are not contained within Order 1050.1F.

However, information regarding timely, effective, and efficient environmental reviews has been incorporated throughout the Order where appropriate.

The expedited reviews referred to in the policy statement are not new to the FAA. For instance, the policy statement contained in Order 1050.1E cites the expedited reviews under Title III of Vision 100—Century of Aviation Reauthorization Act, also cited as the Aviation Streamlining Approval Process Act of 2003, 49 United States Code (U.S.C.) 47171–47175.

Since the expedited review processes are for specific FAA LOB actions, the details of these processes are most appropriately listed in the specific LOB's environmental Orders. For example, FAA Order 5050.4B contains specific expedited processes for airport actions and FAA Order 7400.2K contains specific expedited processes for air traffic actions.

One commenter asked why there was an emphasis on NextGen in Order 1050.1F since this is being addressed in the Air Traffic Organization's (ATO's) NEPA Order.

NextGen is not just ATO-specific and applies across FAA LOBs. One of the purposes for updating Order 1050.1F was to incorporate NextGen terms and processes to ensure that NextGen actions adhere to the requirements of NEPA. Although Order 7400.2 has been updated, it only addresses ATO-specific NextGen activities.

One commenter stated that the NextGen EMS text in the policy paragraph seems out of place unless it explains how an EMS can be used in meeting the FAA's NEPA requirements.

The policy statement in Order 1050.1F highlights the FAA's policies with regard to NEPA compliance and other environmental responsibilities. Since the last revision of FAA Order 1050.1E in 2006, the FAA has begun implementation of NextGen. As a result, NextGen concepts, including NextGen EMS, have been included in the policy statement of FAA Order 1050.1F. The FAA has included the reference to the NextGen EMS in the policy statement because the NextGen EMS is a new approach to improve the integration of environmental performance into the planning, decision-making, and operation of NextGen, which is consistent with the goals of NEPA. More information on how the EMS approach, in general, can be used in the NEPA process is contained in Paragraph 2–3.3.

One commenter stated that the NextGen EMS is conceived simply as a tool to track the environmental impacts of NextGen deployment to ensure its beneficial impacts will support sustained aviation growth.

Based on the comment, it seems there is a misunderstanding of the NextGen EMS program. The NextGen EMS provides the framework for improving NextGen's environmental performance by integrating environmental considerations into the planning, decision-making, and operation of

NextGen to achieve environmental protection that allows sustained aviation growth and is not a tool to track environmental impacts of NextGen deployment as the commenter has suggested.

One commenter questioned how the check and act portion of NextGen EMS is being implemented relative to the airport stakeholders and how does it affect the NEPA process?

The check and act portion of NextGen EMS does not apply to airport stakeholders or their actions. The NextGen EMS is a strategic application of the EMS approach (Plan-Do-Check-Adapt), and is being used to integrate environmental considerations into FAA decision-making. The check and act portion of NextGen EMS pertains to the FAA's 'check' for progress against the goals articulated in our Environmental and Energy Policy Statement. The FAA plans to use the results of the 'check' to inform and 'adapt' its programs and policies as needed. The NextGen EMS helps to inform the FAA's implementation of NEPA.

In contrast, the Order identifies how EMSs can be integrated within NEPA. For instance, EMS data collection, tracking, and analysis may be useful in the preparation of NEPA documentation, including providing input to the affected environment and assessment of potential impacts (see Paragraph 2–3.3). EMSs can also be useful in tracking and monitoring mitigation commitments (see Paragraph 4–4.d).

Using this approach, an airport EMS could not only provide data useful in the analysis within a NEPA document, but also could be used to help monitor any mitigation commitments that are agreed to in implementing a proposed action. However, the use of an EMS approach in this context is not a NEPA requirement.

Paragraph 1–9. Applicability and Scope

One commenter was concerned about the effective date of the Order and how it would be applied to ongoing activities.

Order 1050.1F will be effective on the date the final Order is published in the **Federal Register**. Order 1050.1F applies to the extent practicable to ongoing activities and environmental documents that began before the effective date, but only to those that do not require substantial revisions. Additional text has been added to Paragraph 1–9 to emphasize that procedures contained in this Order should not apply to ongoing environmental reviews where substantial revisions to ongoing environmental documents would be required.

Chapter 2. National Environmental Policy Act Planning and Integration

Paragraph 2–1. Applicability of National Environmental Policy Act Procedures to Federal Aviation Administration Actions

Paragraph 2–1.1. Federal Aviation Administration Actions Subject to National Environmental Policy Act Review

One commenter asked what Federal actions the FAA would take that it views it does not have ''sufficient control and responsibility to condition a license or approval?''

This language has been modified to ''authority to condition a permit, license, or approval'' (see Paragraph 1–9). It is well-settled law that the provisions of NEPA apply only to discretionary Federal actions. The language of Paragraph 1–9 of the Order expresses this requirement for Federal discretion and decisional authority within the typical program and project paradigm of FAA actions. This general statement of applicability of the CEQ Regulations and this Order is clarified further through a series of more specific, though not exhaustive, examples of discretionary actions taken routinely by the FAA (see Paragraph 2–1.1).

Neither Paragraph 1–9 nor Paragraph 2–1.1 was intended to definitively identify the complete universe of actions over which the FAA does or does not have authority to condition a permit, license, or approval. The FAA has modified this text to make it clear that these actions are (1) directly undertaken by the FAA; and (2) undertaken by a non-Federal entity where the FAA has authority to condition a permit, license, or approval.

One commenter requested emphasis on ''major Federal action'' as a requirement triggering NEPA review. The commenter stated that without clarifying that FAA actions subject to NEPA review must constitute ''major Federal action'' and otherwise meet the requirements triggering NEPA review, Paragraph 2–1.1 could be interpreted that the listed actions are subject to NEPA review regardless of whether the statutory triggers have been satisfied.

The FAA does not interpret ''major Federal action'' as a limitation on the applicability of NEPA to specific Federal actions. The CEQ Regulations at 40 CFR 1508.18 define a major Federal action as ''actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Section 1508.27).'' Therefore, the FAA has not defined the concept of a ''major Federal action'' as an initial threshold for determining the applicability of NEPA review.

FAA actions are subject to NEPA except as provided in Paragraph 2–1.2 of Order 1050.1F. FAA actions not subject to NEPA include actions that applicable Federal law or congressional mandate expressly prohibits or makes compliance with NEPA impossible, actions excepted by CEQ Regulations, advisory actions, judicial or administrative civil enforcement actions, and actions that are done in furtherance of NEPA (*i.e.,* development and implementation of NEPA documents and Orders).

Paragraph 2–1.2. Federal Aviation Administration Actions Not Subject to National Environmental Policy Act Review

One commenter stated that NEPA should apply to FAA Determinations of Hazard or No Hazard to Air Navigation, especially when determinations are made for wind farms and cell towers.

Hazard determinations are advisory actions under 14 CFR part 77, *Safe, Efficient Use, and Preservation of the Navigable Airspace.* As noted by the United States Court of Appeals for the District of Columbia Circuit in *Town of Barnstable, Massachusetts* v. *FAA,* 659 F.3d. 28 (D.C. Cir. 2011), the FAA's determinations under part 77 are not legally binding. Furthermore, the Court noted that the FAA has no authority to countermand an approval of a project that the FAA has reviewed under part 77 or to require changes to such a project in response to environmental concerns. Because the FAA lacks the necessary discretion and control over actions reviewed under part 77, the most basic requirements for the application of NEPA are lacking. Therefore, part 77 determinations are advisory actions and as such, not subject to NEPA. Paragraph 2–1.2 of this Order identifies the FAA's advisory actions, including hazard determinations under part 77.

One commenter specified that the statement describing administrative actions is not clear and recommended clarifying whether specific air traffic administrative actions (such as air space boundary changes) are included in Paragraph 2–1.2.d. Administrative Actions.

The statement describing administrative actions states that administrative actions for compliance with NEPA procedures and the promulgation of NEPA Orders are not subject to NEPA. This would include preparation of Order 1050.1F and other

similar Orders that provide requirements and guidance to NEPA practitioners. In addition, it covers contractual arrangements for the preparation of NEPA documents.

Specific air traffic actions that would fall within Paragraph 2–1.2.d include the creation or revision of an air traffic-specific NEPA Order, such as FAA Order 7400.2K. In addition, this would include administrative actions such as hiring a contractor for preparation of a NEPA document.

Air traffic actions, including airspace boundary actions, are subject to NEPA and Order 1050.1F. Some of these actions can be categorically excluded under Paragraph 5–6 of this Order and would not need preparation of an EA or EIS. If these actions are not within the scope of a CATEX, or there is a potential for extraordinary circumstances, an EA or EIS may need to be prepared.

Paragraph 2–2. Responsibilities

Paragraph 2–2.1. Responsibilities of the Federal Aviation Administration

Paragraph 2–2.1.a. General FAA Responsibilities

One commenter stated that special purpose laws should be noted as an FAA responsibility.

Special purpose laws are already covered under Paragraph 2–2.1.a(1) that includes ''ensuring compliance with NEPA, the CEQ Regulations, this Order, and other environmental requirements'' as a general FAA responsibility. The FAA did not add additional language to specify special purpose laws since these are covered under other environmental requirements.

One commenter suggested the Order should more clearly note that the ultimate decision regarding the NEPA document rests with the FAA. For instance, the FAA should approve an initial scope and make the decision on whether or not a NEPA document is ready for public review.

The FAA has the ultimate responsibility for complying with NEPA. Under Paragraph 2–2.1.a(3) of Order 1050.1F, the FAA is responsible for ''independently and objectively evaluating applicant-submitted information and EAs and taking responsibility for content and adequacy of any such information or documents used by the FAA for compliance with NEPA or other environmental requirements.''

Each FAA LOB/SO may provide for specific procedures when working with applicants on the level of review and approval throughout the process (*i.e.,* scope of work, studies, etc.). Applicants are encouraged to coordinate with the appropriate FAA offices to ensure complete, timely, and efficient document preparation.

Throughout Order 1050.1F, there are references to the relationship between the FAA and applicants with respect to the preparation and content of NEPA documents. For instance, Paragraph 6–2.2.e of Order 1050.1F states ''[t]he EA must present a detailed analysis, to the satisfaction of the responsible FAA official, commensurate with the level of impact of the proposed action and alternatives, to determine whether any impacts will be significant.'' This denotes that the responsible FAA official must be satisfied with the analysis contained in the document and must accept responsibility for its contents.

Paragraph 6–2.2.g states ''If a draft EA is circulated, the responsible FAA official, or applicant as directed by the FAA, must circulate the draft EA to interested agencies and parties, including any who submitted comments on the proposed action.'' In this particular paragraph, the applicant is directed by the FAA when circulating a draft EA.

Although the FAA may not formally ''approve'' the EA until a Finding of No Significant Impact (FONSI) is prepared, the FAA is still working with the applicant and/or contractor throughout the process and taking responsibility for the document's contents.

Paragraph 2–2.1.b. Roles of Lines of Business/Staff Offices (LOB/SOs)

One commenter suggested adding a reference to the Environmental Desk Reference for Airport Actions under Office of Airport's Roles and Responsibilities to reinforce use of FAA NEPA guidance documents.

The FAA did not add a reference to the *Environmental Desk Reference for Airport Actions* to Paragraph 2–2.1.b(2)(g). This paragraph outlines the roles and responsibilities of the Office of Airports. The inclusion of FAA Order 5050.4 highlights the supplemental explanatory guidance issued by the Office of Airports, which is subject to FAA Order 1320.1, *FAA Directives Management,* and is adopted and revised by the agency through notice and comment procedures. The *Environmental Desk Reference for Airport Actions,* by contrast, is intended to be an aid or manual for practitioners in satisfying the requirements of the CEQ Regulations, FAA Order 1050.1E, FAA Order 5050.4B, and other environmental requirements. Furthermore, the *Environmental Desk Reference for Airport Actions* does not go through the notice and comment process as do FAA Orders, nor does it fall under FAA Order 1320.1, *FAA Directives Management.* For these reasons, it does not warrant being included in the roles and responsibilities of the Office of Airports as enumerated in the paragraph in question.

Paragraph 2–2.1.c. Actions Undertaken by the FAA

One commenter asked what the ''feasibility analysis (go/no-go) stage'' is.

The referenced text was contained in Order 1050.1E and is consistent with the CEQ Regulations (40 CFR 1502.5(a)). The definition of feasibility is ''capable of being done or carried out'' (*Merriam-Webster Online Dictionary* available at *http://www.merriam-webster.com/dictionary/feasible*).

The go/no-go stage is the point at which the agency determines: (1) Whether an action is available to address an identified need or problem, and (2) whether to seek resolution of the identified need or problem through discretionary Federal action.

Essentially, the referenced paragraph is stating that NEPA documentation must be done before a decision to proceed with a project is made.

Paragraph 2–2.1.d. FAA Approval of Applicant Actions

One commenter questioned whether actions undertaken by an applicant should specify that applicants should comply with all provisions of this Order with regard to documentation required by the FAA.

NEPA is a Federal obligation. Order 1050.1F contains the NEPA implementing procedures for FAA actions. It is the responsibility of the FAA, not an applicant, to ensure that the provisions of this Order have been complied with before accepting any NEPA documentation prepared by an applicant. Paragraph 2–2.1.d, FAA Approval of Applicant Actions, states that the FAA must advise and assist the applicant during preparation of the EA, and must independently evaluate and take responsibility for the EA to ensure that: (1) The applicant's potential conflict of interest does not impair the objectivity of the document; and (2) the EA meets the requirements of this Order.

Paragraph 2–2.2. Responsibilities of Applicants

One commenter recommended that the FAA distinguish between signing CATEX documentation and approving CATEX documentation, since most CATEXs are signed by multiple parties,

and the signatures do not always constitute approval.

The FAA has changed the language from ''sign'' to ''approve'' for clarification. It is important to note that the FAA must make the CATEX determination; any party other than the FAA, including contractors and applicants, cannot approve CATEX determinations.

One commenter stated the Order indicates only the FAA may prepare the CATEX record, and questioned whether a consultant working for the FAA can support the FAA in preparing the written record.

The commenter is correct that applicants and contractors may provide data and analysis to assist the FAA in determining whether a CATEX applies (including whether an extraordinary circumstance exists); however, applicants and contractors may not determine the applicability of CATEXs or approve CATEX documentation (as indicated in Paragraph 2–2.2).

Paragraph 2–2.3 Responsibilities of Contractors

One commenter stated that there should be disclosure requirements for conflicts of interest. In addition, the FAA should provide specific examples of how a contractor's objectivity may be compromised by its involvement in other projects.

The FAA's Procurement Toolbox Guidance, Section T3.1.7 *Organizational Conflict of Interest,* dated April 4, 2006, contains the FAA's requirements for conflicts of interest. This Order is referenced in Paragraph 2–2.1(f)(2). Specific examples are not being added to this Order to avoid any inconsistencies that would occur if T3.1.7 is updated or revised.

Paragraph 2–3. Planning and Integration

One commenter asked for clarification that number of days means calendar days and not business days.

The commenter is correct, when referencing number of days throughout Order 1050.1F, the FAA means calendar days and not business days. For instance, the public comment period is typically 30 (calendar) days. This should be interpreted to be approximately one month.

Paragraph 2–3.1 Early Planning

One commenter asked for clarification on the sentence ''The FAA or applicant, as applicable, should prepare a list noting all obvious environmental resources.'' The commenter asked whether this list is the same as the Initial Environmental Review (IER) prepared by ATO/NextGen and whether ''environmental resources'' is the same as the environmental categories from Appendix A of Order 1050.1E.

The FAA has modified the sentence in Paragraph 2–3.1, Early Planning, to state ''[t]he FAA or applicant, as applicable, should identify known environmental impact categories that the proposed action and the alternatives could affect, including specially protected resources,'' to make it clear that a list does not need to be provided. It was not the FAA's intent to refer to the IER prepared by ATO/NextGen. The term ''environmental resources'' was also changed to ''environmental impact categories'' throughout the order to clarify that the FAA is referring to the categories outlined in Paragraph 4–1 of this Order.

Paragraph 2–3.2 Initial Environmental Review

One commenter questioned whether the Initial Environmental Review paragraph was the same as ATO's IER in Order 7400.2 and/or the same as Office of Airport's CATEX checklist. The commenter also indicated the FAA should consider adding more information regarding the requirements for completion of IERs, CATEX checklists, or special studies that support the applicant's conclusions about the impacts of the proposal.

The process outlined in Paragraph 2–3.2 of this Order is not the same as the IER or the CATEX checklist as suggested by the commenter. This paragraph highlights the steps that the FAA responsible official should consider when initially looking at a proposed project to help identify the potential impacts and where these can be minimized in project design. This initial review helps identify what level of NEPA is appropriate, any permits that need to be obtained, and which agencies the FAA should coordinate with on the proposed action.

The ATO IER and Office of Airports CATEX checklist are specific to ATO actions and airport improvement actions respectively and can aid a NEPA practitioner in deciding what level of documentation to prepare. Since these are specific to the FAA LOB actions, information on these tools is appropriately discussed in their supplemental Orders.

One commenter suggested that the FAA include a statement that an applicant or contractor working for an applicant should contact the responsible FAA official as soon as there is sufficient information about the project's design.

The FAA has decided not to include the suggested text. Paragraph 2–3.2 is intended to direct the FAA, not an applicant, on the sequence of events when starting an evaluation of a proposed project. The appropriate timing of the sequence is dependent on the nature of the action and is determined on a case-by-case basis. Applicants are encouraged to work with the FAA at the earliest stages of project development.

One commenter stated that paragraph 2–3.2 has caused confusion in the past for applicants. They suggested this paragraph be reworded to state applicants should consider if their proposal is likely to trigger adverse impacts relative to special purpose laws or extraordinary circumstances that could be avoided by changes in the proposal that would still achieve the proposal's goals and objectives. Additionally, they noted avoidance of these issues before starting the NEPA environmental review process can materially reduce the time needed to comply with NEPA.

The FAA agrees that avoidance of certain environmental impacts through modifications to design in the early stages of a project can reduce the overall time needed to comply with NEPA. However, the FAA has not added the language provided by the commenter to this paragraph. First, this Order is designed for use by FAA NEPA practitioners and is not specific to applicants. Therefore, it is not appropriate to narrow the scope of the identified text in a way that appears to limit its applicability to project applicants. However, applicants are encouraged to familiarize themselves with the Order's contents as this will often aid the applicant in understanding the FAA's NEPA responsibilities and prepare the applicant to assist the FAA in the execution of its NEPA responsibilities. In addition, Paragraph 2–3.2 provides guidance to NEPA practitioners on what to consider initially for a proposed action. It is not limited to identification of adverse impacts relative to special purpose laws and extraordinary circumstances. Rather, this paragraph also instructs NEPA practitioners to determine whether an action is already covered by an existing programmatic document or is within the scope of a CATEX, and instructs NEPA practitioners to identify the level of controversy regarding the project's risks of causing environmental harm, which can play important roles in deciding the level of documentation.

To address the commenter's concern regarding incorporating mitigation into project design, the FAA has added more

clarifying language to Paragraph 2–3.6 of the Order to reflect that applicants should work with the FAA to incorporate mitigation into project design during early planning and ensure that mitigation is consistent with the project purpose and need.

One commenter asked for guidance on how to determine if previous NEPA documents covering the proposed action exist.

Paragraph 2–3.2 states the responsible FAA official should initially review whether the proposed action is covered under an existing NEPA document. Since this is an FAA responsibility, and has not caused any issues in the past, no additional guidance is being prepared. The FAA will coordinate with the applicant and other Federal agencies to determine the existence of relevant documents for the proposed action.

One commenter suggested that Paragraph 2–3.2 should emphasize ''adequately addressed'' and ''approved NEPA document'' and remove the language on broad system, program, or regional assessment.

FAA disagrees with the comment. The changes the commenter has recommended do not adequately capture what the phrase is meant to convey. The addition of ''adequately'' or ''approved'' would not be appropriate as a practitioner could build on a document that was incomplete or was never approved.

Programmatic NEPA documents remain a viable approach and may be well suited to certain types of projects. As such, the FAA has retained the language referencing programmatic documents in the Order (broad system, program, or regional assessment). However, a cross reference is provided to direct NEPA practitioners to Paragraph 3–2 that outlines what a programmatic document entails.

One commenter questioned whether ''broad system, program, or regional assessments'' are additional terms of documentation to meet the FAA's NEPA compliance such as CATEX checklist, IER, EA or EIS.

The terms ''*broad system, program,* and *regional assessment*'' refer to programmatic documents. The only terms of documentation to meet the FAA's NEPA compliance are CATEXs, EAs, and EISs. Other terms such as CATEX checklist, IER, and types of programmatic documents (including broad system, program, or regional assessments), are specific CATEX, EA, or EIS documentation choices.

Paragraph 2–3.2.b(2) Cumulative Actions

One commenter stated that the FAA has traditionally applied cumulative impact philosophy to CATEXs, IERs, and EAs and therefore shouldn't the general term ''NEPA documentation'' be applied rather than limiting it to EISs.

The commenter may be confusing cumulative impacts and cumulative actions. Cumulative impacts must be evaluated for CATEXs, EAs, and EISs to determine the potential for significance. However, in this text we are referring to cumulative actions, which by definition have significant impacts, and thus would be discussed only in an EIS.

One commenter recommended the Order use the definition for cumulative actions from the CEQ Regulations at 40 CFR 1508.7.

The regulations cited by the commenter define the term ''cumulative impact,'' which is different from the concept of cumulative actions. ''Cumulative impacts'' are impacts on the environment which result from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions (see CFR *1508.7).* Cumulative actions are discussed in regard to determining the scope of an EIS and are actions ''which when viewed with other proposed actions have cumulatively significant impacts,'' and should be addressed in a single EIS (see 40 CFR 1508.25(a)(2)). The Order discusses the scope of NEPA documents, and with respect to cumulative actions, mirrors the language in the CEQ Regulations at 40 CFR 1508.25(a)(2). Cumulative impacts are discussed in Paragraph 4–2.d(3) of Order 1050.1F. A cross reference for the discussion on cumulative impacts (Paragraph 4–2.d(3)) has been added to Paragraph 2–3.2.b(2) to help avoid any confusion.

One commenter recommended that the FAA should clarify what kinds of proposed actions should be considered when determining cumulative actions.

The referenced text is the same as the language used in 40 CFR 1508.25(a)(2) of the CEQ Regulations. Any proposed actions whose impacts affect similar resources should be considered to determine if the impacts, when considered cumulatively, are significant and therefore should be addressed in a single EIS. Further guidance on the consideration of cumulative impacts is provided in the 1050.1F Desk Reference.

Paragraph 2–3.2.b(3) Similar Actions

One commenter requested that the FAA include additional guidance on the criteria used to identify similar geography and timing.

The text in the Order regarding ''similar actions'' is based upon the language of Section 1508.25(a)(3) of the CEQ Regulations. The FAA does not have specific criteria to identify similar actions. Consistent with the CEQ Regulations, reasonable judgment should be applied to determine if actions have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.

Paragraph 2–3.3 Environmental Management System Approach

One commenter stressed that, unlike EMS, NEPA does not require either ''continual improvement in environmental performance'' or selection of an alternative that makes progress towards that goal.

The FAA acknowledges that NEPA is a procedural statute that does not mandate ''continual improvement in environmental performance.'' The FAA has revised Paragraph 2–3.3 of the Order to more appropriately describe the role that EMS can play in the NEPA process. The final Order removes emphasis from the EMS concepts of continual improvement in environmental performance and selection of an alternative that makes progress towards a specific environmental goal, and instead emphasizes how EMS can be integrated and utilized for environmental analysis and project decisions.

Paragraph 2–3.4. Reducing Paperwork

One commenter suggested adding more detail to the reducing paperwork paragraph by adding information on FAA Order 1000.36, FAA's Writing Standards, CEQ's Handbook for Integrating NEPA and Section 106, and further guidance on joint document preparation.

The referenced text is derived from 40 CFR 1500.4 of the CEQ Regulations and has been provided to remind individuals how they can reduce the length of NEPA documents and reduce paperwork generated when complying with NEPA. Generally speaking, the FAA has chosen not to elaborate on these principles in Order 1050.1F. However, Paragraph 2–6 of Order 1050.1F provides more information on plain language.

The FAA does not have specific guidance on the preparation of joint documents. However, guidance on joint document preparation can be found on CEQ's Web site.

One commenter stated that measures to reduce paperwork should apply to all NEPA documents, not just EISs.

The FAA agrees and has added a statement that the FAA applies paperwork reduction measures to all NEPA documents.

Paragraph 2–3.6 Mitigation

One commenter stated that the Order should require, not just urge, the responsible FAA official to take mitigation into account in project design to avoid and mitigate environmental harm.

The Order addresses mitigation as it applies both to incorporation into project design and to address unavoidable environmental impacts. The FAA recognizes, however, that the facts of each individual project will dictate the availability and appropriateness of mitigation for incorporation into project design. For that reason, the FAA has included language in the Order that encourages, but does not require, incorporation of mitigation into project design.

One commenter recommended adding clarification that mitigation should be incorporated into project design only in so much as it does not diminish the purpose of and need for the project. The commenter also stated that Paragraph 2–3.6 of the draft Order 1050.1F ''can be construed by a lay reader to mean that 'environmental harm' is always a factor in meeting purpose and need. Is 'environmental harm' the same as 'environmental significant impact?' 'Harm' can be construed as any type of environmental change that may not necessarily be significant.''

The FAA interprets the comment regarding whether environmental harm is a factor in meeting purpose and need to mean that the commenter is concerned that mitigation incorporated into project design could change the agency's approach to defining purpose and need. The FAA has not intended to suggest that a desire to mitigate environmental impacts should undermine the purpose and need of a proposed action. The FAA has modified Paragraph 2–3.6 of the final Order to emphasize that mitigation incorporated into project design should be consistent with the purpose and need of the project.

With respect to the commenter's question of whether environmental harm is the same as environmental significant impact, this paragraph was not intended to limit use of mitigation only in the case of a significant impact, as mitigation can be used to reduce any impacts whether or not they are significant. The FAA has edited Paragraph 2–3.6 to remove the term ''environmental harm'' to avoid any confusion between harm and impacts.

One commenter suggested the FAA highlight that costs should be taken into account when decisions are being made to incorporate mitigation.

Whether or not to include discussion of the costs of mitigation within the environmental documentation is determined on a case-by-case basis. Therefore, the requested text changes regarding discussion of mitigation costs have not been included in 1050.1F.

One commenter suggested that the term mitigation should be reserved specifically for actions to address unavoidable environmental impacts and not for avoidance measures built into the project design.

The concept of mitigation measures incorporated into project design is based on CEQ's guidance on *Appropriate use of Mitigation and Monitoring and Clarifying the Appropriate use of Mitigated Findings of No Significant Impact,* 76 **Federal Register** 3843 (January 21, 2011).

The guidance distinguishes mitigation incorporated into project design from other types of mitigation measures that can be, but may not be, adopted when the proposed project is implemented. Mitigation measures incorporated in project design, by their nature, are measures that will be implemented.

In addition, mitigation as defined under 40 CFR 1508.20 includes ''avoiding the impact altogether by not taking a certain action or part of an action.'' This further supports not limiting mitigation to unavoidable impacts.

Once commenter suggested including mention of the applicant and contractor(s) when coordinating mitigation.

In response to the comment, FAA has added ''[F]or projects involving an applicant, the FAA will coordinate proposed mitigation with the applicant.'' FAA did not mention the contractor since the contractor is not implementing the mitigation. However, the applicant and the FAA will work with contractors to ensure that mitigation measures are described adequately in a NEPA document.

Paragraph 2–4. Coordination

Paragraph 2–4.2 Lead and Cooperating Agencies

Paragraph 2–4.2.b Cooperating Agency Invitation

One commenter stated that the FAA should require, not merely urge, the FAA NEPA lead to ask state and local agencies with special expertise or jurisdiction to be cooperating agencies.

Cooperating Agency status is a specific status that establishes a formal relationship between entities to cooperate in the preparation of a NEPA document for a proposed action. The CEQ Regulations state that ''a state or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by agreement with the lead agency become a cooperating agency.'' Paragraph 2–4.2.b is consistent with Sections 1501.6 and 1508.5 of the CEQ Regulations. While Cooperating Agency status for state and local agencies with special expertise or jurisdiction is not required in the Order, the FAA notes that Paragraph 2–4.3 requires the responsible FAA official, when appropriate, to consult affected Federal and state agencies, tribes, and local units of government early in the NEPA process.

Paragraph 2–4.2.c Role as a Cooperating Agency

One commenter stated that the FAA should emphasize close involvement and coordination with the lead agency throughout the coordination process to ensure that the FAA's views as a cooperating agency are reflected and requirements are met, therefore reducing the delay of the project.

The FAA has modified the text to in Paragraph 2–4.2.c to clarify that active communication with the lead agency early and often in the NEPA process can help to ensure that the FAA's views are adequately incorporated in the environmental document.

Paragraph 2–4.3 Intergovernmental and Interagency Coordination

One commenter stated the Order should more clearly define the circumstances when consultation with Federal and state agencies, tribes, and local units of government is appropriate and identify any exceptions.

The Order states that the FAA must consult with affected Federal and state agencies, tribes, and local units of government ''when appropriate.'' The basis for concluding that consultation is appropriate with another Federal or state agency, tribe, or local unit of government depends upon the specific facts of each project. The need and extent of consultation depend in part upon the existence of resources or impacts that implicate special purpose laws or other requirements. Due to the highly fact-specific nature of this inquiry, Order 1050.1F should not attempt to define specifically when it is or is not necessary and appropriate to undertake consultation. The decision as to when and with whom to consult is made on a case-by-case basis. Consultation and coordination with Federal and state agencies, local

governments, and Tribes is strongly encouraged throughout the Order and when required has been specified. The 1050.1F Desk Reference details more information on consultation and coordination with non-FAA entities under each environmental impact category.

One commenter stated the Order should reference Federal guidance on concurrent agency consultation such as CEQ's NEPA and NHPA—A Handbook for Integrating NEPA and Section 106.

The 1050.1F Desk Reference contains specific guidance on consultation processes. This guidance is provided in the 1050.1F Desk Reference, as opposed to Order 1050.1F, so it can be easily updated if other agencies modify procedures or processes.

Paragraph 2–4.4 Tribal Consultation

One commenter questioned whether the need for government-to-government consultation applies to all tribes or just federally-recognized tribes?

Government-to-government consultation applies to tribes as defined in Paragraph 11–5.b(14) of the Order, which specifies that tribes are those recognized under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Paragraph 2–5. Public Involvement

Two commenters stated that the Order does not provide clear descriptions of public notification and involvement requirements for each of the levels of environmental review, including the timing and extent of public involvement expected or required for CATEXs, EAs, and EISs.

The Order discusses public involvement in various sections. The FAA has provided more discussion in these sections to help prevent any confusion on public involvement in NEPA processes. The following discussion is intended to further explain what requirements are applicable and where to find these in the Order.

The FAA encourages public involvement in various ways depending on the type of action and the potential for impacts. This Order makes the public involvement process as flexible as possible for case-by-case determination. Depending on the type of action and where it is located, it may be better to conduct early scoping meetings, solicit public comments on a draft document either through comment solicitation or through public meetings, or do a combination of these and other approaches.

It is important to distinguish between public notification and public comment to avoid confusion regarding these public involvement concepts and their associated requirements. Public notification makes a NEPA document available to the public, whereas public comment invites the public to not only review the document but also to provide comments.

The Order addresses the various public involvement topics as follows:

In Paragraph 2–5, the FAA provides a limited discussion of public involvement, including timing, to encourage planning of public involvement at the early stages of a project's consideration. This paragraph then refers the reader to the applicable public involvement paragraphs for EAs and EISs elsewhere in the Order.

Paragraph 5–4 of the Order makes it clear that public notification of a CATEX is not a requirement, but may be encouraged in certain circumstances. There is no prescribed form for notification in those instances where the FAA decides to undertake public notification of a CATEX.

Paragraph 6–2.2.b specifies that when preparing EAs, the FAA or applicant must involve the public, to the extent practicable. Paragraph 6–2.2.g refers to circulation of the draft EA for public comment. This Order leaves flexibility as to the type and extent of public involvement provided for EAs beyond the minimum requirement of public notification under 40 CFR 1506.6(b) of the CEQ Regulations. Strategic planning is needed to successfully integrate public involvement in the EA process.

Paragraph 6–3.d identifies specific circumstances where a 30-day public review period is required for EAs and FONSIs.

Paragraph 6–3.d states that the FAA or applicant must make the EA and FONSI available to the public. The title of this paragraph has been modified to remove the reference to ''and review'' so that it is not confused with public comment periods.

Paragraph 7–1.2.c states that scoping is required for EISs. The FAA's scoping process is dependent on the type of action and project complexity. Paragraph 7–1.2.d states the draft EIS must be made available for public review and comment and identifies that public meetings may be held to discuss comments on the draft document.

Paragraph 7–1.2.b states that the FAA must prepare a Notice of Intent which includes an overview of the proposed action, the alternatives being considered (including no action), and the name and address of the FAA official who can answer questions about the proposed action and EIS. Paragraph 7–1.2.i states that the final EIS, comments received, and supporting documents must be made available to the public. Paragraph 7–2.1.e states that there must be a notification of the availability of the ROD.

Paragraph 2–5.1. Timing and Extent of Public Involvement

One commenter requested that the extent of early coordination should depend on not only project complexity, degree of Federal involvement, and anticipated environmental impacts of the proposed action, but also the requirements of applicable special purpose laws. In addition, the commenter suggested replacing the term ''sensitivity'' with the phrase ''the potential for a project to be highly controversial on environmental grounds.''

Paragraph 2–5.1 deals with the timing and extent of public involvement. The existing text in this paragraph encompasses the requirements of applicable special purpose laws, which are discussed in more detail under Paragraph 2–5.2.a.

Replacing ''sensitivity'' with ''highly controversial on environmental grounds'' does not adequately capture the full range of situations in which early coordination with the public should be considered.

One commenter is concerned that the wording of Paragraph 2–5.1 will not allow the public and resource agencies to provide meaningful input into the preparation of an EA. The commenter specifically requested that the following text be added, ''[F]or an EA, this [early coordination] would normally occur when the sponsor's early planning information is sufficient to describe the proposed action and a preliminary scope of the actions' expected environmental impacts. For an EIS, this [early coordination] would occur during the scoping process.''

Paragraph 2–5.1 requires the FAA or applicant to provide pertinent information to the affected communities and agencies and to consider their opinions at the earliest appropriate time. This paragraph also indicates that the extent of early coordination depends on the complexity, sensitivity, degree of Federal involvement, and anticipated environmental impacts. This language is designed to be flexible so that public involvement can be tailored to the specific facts of each proposal, rather than creating a rigid approach that may not be reflective of the unique circumstances surrounding each proposed action. The FAA has taken this flexible approach to ensure meaningful, yet project-appropriate public and agency input early in the NEPA process. For this reason, the FAA

has declined to make the requested text changes in Paragraph 2–5.1. To avoid confusion regarding the timing and extent of public involvement for EAs versus EISs, the FAA has provided cross-references to the specific paragraphs where this information is contained in the Order. Additional information on public involvement for EAs is provided in Paragraph 6–2.2.b. Additional information on public involvement for EISs is provided in Paragraph 7–1.2.

Paragraph 2–5.2. Federal Aviation Administration Requirements for Public Involvement

Paragraph 2–5.2.b. Environmental Justice

One commenter asked what form of notification is considered acceptable to notify potentially affected minority and/or low income populations and whether this requirement applies to actions initiated by airport sponsors.

This requirement is based on Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Federal Register 7629 (February 16, 1994),* and DOT Order 5610.2(a), *Environmental Justice, 77* FR 27534 (May 10, 2012), which require the FAA to provide for meaningful public involvement by minority and low-income populations. The requirement to notify potentially affected minority and/or low income populations was provided in FAA Order 1050.1E at Paragraphs 209d and 16.1a. The FAA must ensure that its NEPA process provides public involvement opportunities for disproportionately affected low-income and minority populations to comply with Executive Order 12898 and DOT Order 5610.2(a).

If the action initiated by an airport sponsor or other applicant requires a Federal decision (permit, license, etc.), then the need to notify potentially affected minority and/or low-income populations applies. Any form of notification is acceptable as long as it is effective for the population and every effort was made to inform the affected community. Decisions regarding what form of notification to use will be based, in part, upon the level of community interest and the complexity of the concerns. It is important to involve the appropriate stakeholders to ensure effective notification. Such stakeholders may include, but are not limited to: community and neighborhood groups; community service organizations; environmental organizations; local industry and business; religious communities; not-for-profit and non-governmental organizations; and government agencies (Federal, state, county, local and tribal). Notification options include, but are not limited to: direct mailings of fact sheets or community updates (a mailing list should be developed); distribution of materials to and through community centers and local government offices and groups; local newspaper notices (preferably appearing on a regular news page, not in the legal/public notice section); and press releases or public service announcements issued to local media.

Paragraph 2–5.3 Public Meetings, Workshops, and Hearings

Several commenters stated public involvement, including meetings, hearings, notice, and comment periods, should be required, not merely urged.

The FAA's public involvement requirements are consistent with CEQ's requirements for public notice and comment. The level of public involvement required by the Order is commensurate with the level of potential significant impacts. The need to prepare public notices and convene meetings, workshops, and hearings is determined on a case-by-case basis depending on the type of action, the scope and degree of certainty of impacts, the complexity of issues, the potential for significant impacts, and other considerations. Paragraphs 5–4, 6–2.2, and 7–1.2 of the Order outline specific requirements for CATEXs, EAs, and EISs respectively. While the Order requires FAA NEPA practitioners to meet the requirements for public involvement as set forth in the CEQ Regulations, the Order also encourages a thoughtful public involvement approach that is tailored to the facts and circumstances of each individual project subject to NEPA review.

One commenter questioned the following regarding public involvement: (1) How the FAA differentiates between a hearing and a public meeting; (2) how a public meeting differs from a workshop; and (3) if an open house is also an acceptable form of public involvement.

A public hearing is an official proceeding required under various laws. It is a formal process that has a designated public hearing officer who presides over the meeting and a court reporter present to compile a transcript of all oral comments.

A public meeting is a less formal meeting than a public hearing. Public meetings can vary in their structure and approach to best facilitate public involvement. Public meetings can include workshops or open houses that allow the public to ask questions and get clarifications on the proposed action and NEPA process.

One commenter asked for clarification regarding public hearings. The commenter questioned: (1) Whether a designated official must preside over a public hearing; (2) whether a formal court reporter and preparation of a transcript is required; (3) how meeting notices should be advertised; and (4) whether meeting materials need to be provided in advance.

When holding a public hearing, a designated official must preside over a public hearing and a court reporter must be present to compile a transcript of the hearing. This language has been added to Paragraph 2–5.3.b to clarify the requirements of a public hearing.

Notice of a public meeting or hearing should be published at least 30 days prior to the event. Notice of actions having national implications must be published in the **Federal Register** and mailed to national organizations having an interest in the matter. Other methods of notifying the public about public meetings or hearings include: Newspaper ads, direct mailings, notices on the FAA Web site, and other notification methods reasonably accessible by the public. If the purpose of the public meeting is to obtain comments on draft NEPA documents, those documents should be made available for public review at least 30 days before the event. While other materials may be utilized during the public meeting or hearing to help explain the proposed action and/or the NEPA document, only the draft NEPA document must be made available for public review in advance of the public hearing or meeting. Paragraph 2–5.3.b of Order 1050.1F provides further details on public meetings, hearings, and public notification of such, including the information the public hearing/meeting notice.

One commenter asked whether workshops or open houses are sufficient to meet the requirement for public involvement since they are not specifically referenced.

Workshops and open houses are forms of public meetings and are therefore sufficient for public involvement for NEPA purposes, but in certain instances other applicable requirements regarding public outreach may exist. For example, 49 U.S.C. 47106(c)(1)(A)(i) requires an opportunity for a public hearing where a project involves the location of an airport, runway, or a major runway extension. If a hearing were requested, a NEPA workshop or open house alone would not satisfy the statute's

requirement that a hearing be provided when requested. Even where no other public involvement requirement is applicable, the type of public involvement appropriate in the NEPA context will vary depending on the nature of the action and the potential for impacts. Strategic planning is needed to successfully integrate public participation in the NEPA process.

Paragraph 2–7. Limitations on Actions Involving Real Property Prior to Completing National Environmental Policy Act Review

One commenter asked the FAA to clarify whether discussion with property owners would be considered formal contact.

The purpose of this paragraph is to prevent formal action to acquire property, including any offer to purchase property, before NEPA is completed. The text in this discussion has been modified to replace the phrase ''formal contact with the property owner'' with the phrase ''formal action to acquire the property.'' Therefore, discussion alone would not be considered ''formal action to acquire the property.''

One commenter requested the exception for further engineering study be expanded for other environmental investigations.

The prohibition in Paragraph 2–7.b on formal action to acquire property for the purpose of conducting other environmental investigations is already provided by the circumstance provided in Paragraph 2–7.b(2) that states that ''obtaining rights-of-way for such purposes as preparation for site testing, obtaining data, property surveys, etc.'' is permissible. Site testing and obtaining data would include environmental investigations.

Chapter 3: Levels of National Environmental Policy Act Review

Paragraph 3–1. Three Levels of National Environmental Policy Act Review

Paragraph 3–1.2 Actions Normally Requiring an Environmental Assessment

One commenter suggested the language in the introduction to Paragraph 3–1.2 be expanded to indicate that ''human environment'' also includes natural resources.

As stated in Paragraph 11–5.b(7) of the Order, the definition for human environment includes natural resources. Because this term is already defined and includes natural resources, the FAA has not added language to the introduction of Paragraph 3–1.2 as requested by the commenter.

One commenter questioned whether it was accurate that acquisition of property greater than three acres that requires construction of new office buildings and essentially similar FAA facilities requires an EA [Paragraph 3–1.2.b(1)]. The commenter also asked whether an EA is required if the land was undeveloped or if the size of the building would matter.

This example of actions normally requiring an EA was included in Paragraph 401a of Order 1050.1E and has not been modified in this update. The acquisition of land of more than three acres for construction of a building would require an EA under Order 1050.1F. This is irrespective of whether it is developed or undeveloped land and the size of the building.

However, not all acquisition of land over three acres requires an EA. Paragraph 5–6.4.b allows for acquisition of land and relocation associated with a categorically excluded action. Paragraph 5–6.4.bb allows for acquisition of land for an RPZ or other aeronautical purposes provided there is no land disturbance and it does not require extensive business or residential relocations.

Actions that normally require an EA are actions that do not fall within the scope of a CATEX and normally do not require an EIS. In order for an agency to create a CATEX, the agency must make a determination that these types of actions do not individually or cumulatively, absent extraordinary circumstances, have significant impacts. The limitations within a CATEX are based on FAA experience and can only be modified if the FAA provides justification for the modifications.

One commenter asked the FAA to clarify what type of NEPA documentation is required for fuel storage and distribution systems. The commenter specifically asked, for example, whether 400 Hz power at gates would require an EA, and whether creation of hydrant fueling in aprons requires an EA.

Paragraph 3–1.2.b(5) states establishment of FAA housing, sanitation systems, fuel storage and distribution systems, and power source and distribution systems normally require an EA. Actions that are not within the scope of a CATEX will require the preparation of an EA. With respect to documentation required for fuel storage and distribution systems, the FAA has established CATEX 5–6.4.u for the installation, repair, or replacement of fuel storage tanks. The CATEX specifically states it does not include the establishment of bulk fuel storage and the associated distribution systems.

If a tank within a fuel storage distribution system is being replaced or repaired, the action would still be within the scope of the CATEX. However, if a distribution system is being established, the potential for significant impacts increases and an EA must be prepared. For determination of whether a particular project is within the scope of the CATEX 5–6.4.u, please see the CATEX Justification Package available on the FAA's Web site at: *http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/media/C-CATEX_Justification_Package.pdf*.

With respect to the specific situations provided by the commenter, to the extent that these actions are within the scope of existing CATEXs and do not involve extraordinary circumstances, these actions would not require an EA. The FAA has not removed any CATEXs with this update to FAA Order 1050.1E. However, more information would be needed to determine if these types of actions are within the scope of existing CATEXs.

One commenter asked for clarification on how FAA determines ''significantly increased air emissions'' in Paragraph 3–1.2.b(11). The commenter stated that the FAA's threshold of significant impact is an exceedance of the NAAQS, which is different from an increase in air emissions.

FAA has revised the language in this paragraph to state ''actions that may cause significant impacts to noise, air quality, or other environmental impact categories.'' Chapter 4 of the Order provides the information necessary to determine whether an action may cause significant impacts to noise, air quality, or other environmental impact categories.

One commenter stated that commercial space actions [Paragraph 3–1.2.b(15)] should be categorized as actions typically requiring an EIS because both the frequency and duration of commercial space launches could have significant impacts to adjacent wildlife resources.

Based upon the agency's experience, there is no evidence that the types of commercial space actions described in Paragraph 3–1.2.b(15) ''typically'' have significant impacts to wildlife that require review in an EIS. As is always the case, each proposed project is examined to determine the appropriate level of NEPA review based upon the proposed action's specific facts. With respect to the type of commercial space

actions described in Paragraph 3–1.2.b(15) of the Order, the FAA examines the frequency of the launches as well as the duration of these launches, among other considerations, to determine if there would be significant impacts. If significant impacts are reasonably foreseeable, an EIS would be required.

Paragraph 3–1.3. Actions Normally Requiring an Environmental Impact Statement

Two commenters asked for clarification on the definition of a major runway extension and why a major runway extension requires an EIS when runway extensions and runway strengthening only require an EA per the Airport and Airway Improvement Act (AAIA).

The AAIA does not contain any provisions identifying the type of NEPA documentation required for specific types of airport development actions.

There is a distinction between a runway extension and a major runway extension. Major runway extension has been defined by the FAA's Office of Airports as a runway extension that causes a significant adverse environmental impact to any affected environmental resource (*e.g.,* wetland, floodplain, historic property, etc.). This includes, but is not limited to, causing noise sensitive areas in the Day-Night Average Sound Level (DNL) 65 decibel (dB) contour to experience at least a DNL 1.5 dB noise increase when compared to the no action alternative for the same time frame (see Paragraph 9.1l(1) of 5050.4B).

To the extent that a runway extension causes a significant impact, that runway extension would be considered a major runway extension and an EIS would be required.

One commenter questioned why the list of actions under Paragraph 3–1.3, Actions Normally Requiring an Environmental Impact Statement, does not have any associated air traffic operation actions.

The list of actions that is described in the Order as normally requiring an EIS has been compiled by the FAA based on the FAA's extensive experience with these actions over time. Where the FAA's experience has indicated that a category of actions normally results in one or more significant impacts, the FAA has included that category of actions in the list of actions normally requiring an EIS. At this time, determinations to prepare an EIS for air traffic actions are decided on a case-by-case basis because the FAA has not identified any air traffic actions that typically involve significant impacts. For this reason, there are no air traffic actions to include in the list that is the subject of this comment. Notwithstanding the absence of air traffic actions on the list of actions normally requiring an EIS, the FAA may decide that an EIS is appropriate for a particular air traffic action.

Paragraph 3–2. Programmatic National Environmental Policy Act Documents and Tiering

One commenter stated that FAA commercial space launch site operator licenses should be examined under a national programmatic NEPA document to identify the need, purpose, and alternatives that reflect the national scope of the project under consideration (i.e., alternatives should be considered nationwide and not limited to any given region).

The FAA does not agree that there is a national scope for FAA commercial space launch site operator licenses; rather, the geographic extent of the applicant governs the geographic scope of the NEPA review. The FAA does not fund commercial space launch sites or designate where a launch site should be developed within the United States. Instead, the FAA reviews the proposed actions of applicants that want to establish a new commercial space launch site at a specific location. As such, the purpose and need and range of alternatives for any individual commercial space launch site application are dictated by the proposal the FAA receives from the applicant.

Chapter 4. Impact Categories, Significance, and Mitigation

Paragraph 4–1. Environmental Impact Categories

One commenter requested clarification that the discussion of resources in a NEPA document must follow the alphabetical order indicated in Paragraph 4–1.

The discussion of resources in a NEPA document does not need to address environmental impact categories in alphabetical order. This discussion can vary depending on the type of action and the potential impacts. The FAA has added a statement to the Order to specify that the categories are alphabetized in the Order for ease of reference but are not intended to impose an obligation to present analysis in alphabetical order in the FAA's NEPA documents.

One commenter requested that the FAA consider adding references to migratory bird conservation, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act throughout the Order.

The FAA has added migratory birds to Paragraph 2–3.2 and has added migratory bird impacts and bald and golden eagle impacts to the factors to consider column for the Biological Resources environmental impact category in Exhibit 4–1. The 1050.1F Desk Reference contains additional information on migratory birds, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection.

One commenter suggested changing the environmental impact category for Biological Resources to include federally and state-protected species since there is no separate category to do so.

The environmental impact category, Biological Resources, includes federally and state-protected species without making the change to the title of the category. The significance threshold and factors to consider specifically mention federally and state-protected species. The Biological Resources environmental impact category chapter of the 1050.1F Desk Reference contains more information on how to analyze Biological impacts.

One commenter asked for clarification that Section 4(f) refers to Section 4(f) of the DOT Act.

The commenter is correct that references to Section 4(f) pertain to 49 U.S.C. 303, formerly Section 4(f), of the DOT Act of 1966. Due to the ubiquitous use of the term ''Section 4(f)'' in Federal jurisprudence, as well as practitioner familiarity with this terminology for the requirements codified at 49 U.S.C. 303, the FAA continues to refer to the statutory requirements as ''Section 4(f)'' requirements. Please see the footnote in Paragraph 2–3.2 of the Order.

Paragraph 4–2. Consideration of Impacts

Paragraph 4–2.b. FAA-Approved Models

One commenter asked the FAA to clarify if AEE must approve all input files used for analysis. Clarifying this issue would be helpful in developing NEPA document preparation schedules.

AEE does not need to approve standard input files when the FAA-approved models are used. However, AEE approval is required for non-standard input files, models, and methodologies. All input files, regardless of the model used, should be provided to the responsible FAA official for informational purposes. Appendix B of the Order provides more detailed instructions. The text in Paragraph 4–2.b regarding the FAA-approved models

has been modified to provide better clarity.

One commenter asked for additional information on the use of non-FAA approved models. For example, not all FAA tools will evaluate various impacts at airports from an air quality perspective. Thus, there are specific circumstances where projects in any state/location must use a non-FAA model.

The 1050.1F Desk Reference provides information on when an FAA-approved model must be used and the situations in which approval for use of other models would be required for both noise and air quality.

One commenter stated that without being able to review the Desk Reference, they are unclear if the FAA is improving the guidance about acceptable tools for various efforts. Since all technical environmental category detail is deferred to the 1050.1F Desk Reference, this material should also be deferred, as it is without context.

The FAA recognizes the public's interest in reviewing the 1050.1F Desk Reference with Order 1050.1F. However, the purpose of this section is to outline the requirement that an FAA-approved model must be used for both air quality and noise analysis. We have retained the information for the FAA-approved models within the Desk Reference to allow for updates as new versions of the models are available.

Although the FAA is not providing a formal comment period on the 1050.1F Desk Reference, the users of this desk reference can submit comments on it through the FAA Web site at *http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/*. These comments will be reviewed and incorporated into the 1050.1F Desk Reference on an ongoing basis, as needed.

Paragraph 4–2.c. Environmental Impact Category Not Affected

Two commenters asked for clarity on what should be documented when an environmental impact category is not affected.

When an environmental impact category is not relevant to the proposed action, the reason why it is not relevant should be specified and no additional analysis is required. This could be a simple statement that the environmental impact category is not present or an explanation why a proposed project would not impact a specific resource. The Order has been revised to clarify that ''the reason why the impact category is not relevant'' should be briefly noted.

Paragraph 4–2.d. Types of Impacts

One commenter requested a definition for ''reasonably foreseeable action'' such as provided in FAA Order 5050.4B Paragraph 9.q.

The definition of ''reasonably foreseeable action'' provided in FAA Order 5050.4B is specifically tailored to airport improvement projects and the type of considerations that are unique to those actions. Application of the definition of ''reasonably foreseeable action'' from FAA Order 5050.4B to actions that do not resemble airport improvement actions and the unique nature of such actions would therefore not be appropriate in Order 1050.1F.

The FAA has decided not to create a separate, broadly applicable definition of ''reasonably foreseeable action'' in Order 1050.1F. Because Order 1050.1F is applicable agency-wide, its terms and requirements must be sufficiently broad to appropriately address the wide variety of actions taken by LOB/SOs within the agency. The definition of a reasonably foreseeable action may vary based on the nature of the action being undertaken, and the FAA has determined that reasonably foreseeable actions are best identified within the context of the individual projects being examined by the relevant office.

To assist NEPA practitioners in determining on a case-by-case basis what actions are reasonably foreseeable, the FAA has provided guidance in the 1050.1F Desk Reference under the cumulative impacts section regarding reasonably foreseeable actions. Finally, as stated earlier, Order 5050.4B will continue to apply to Office of Airports actions and will be updated to include any changes needed to conform to Order 1050.1F.

Paragraph 4–2.f. Special Purpose Laws and Requirements

One commenter asked whether applicants have to summarize/note what permits are required or whether they must provide the materials to support the permit/license (i.e., complete a permit application/license).

An EA or EIS should include information required to demonstrate compliance with other applicable requirements and should identify any permits, licenses, other approvals, or reviews that apply to the proposed action and indicate any known problems with obtaining them. The EA or EIS must report on any special consultation required. The EA or EIS does not have to contain a complete permit application or license application. Paragraph 4–2.f has been modified to clarify the requirements.

Paragraph 4–3.2 Context and Intensity

One commenter asked for clarification on whether highly controversial in the seventh bullet under context and intensity means highly controversial for any reason or highly controversial on environmental grounds.

The referenced bullet in Paragraph 4–3.2 describes the contents of Section 1508.27(b)(4) of the CEQ Regulations, which lists ''[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial'' as a factor that should be considered in evaluating the intensity of environmental impacts. Judicial interpretations of this regulatory provision are consistent with the definition of ''highly controversial on environmental grounds'' in Paragraph 5–2.b(10), which was edited for clarity in the final Order. The FAA has not added ''on environmental grounds'' after ''highly controversial'' in Paragraph 4–3.2 because that phrase does not appear in Section 1508.27(b)(4) of the CEQ Regulations.

Exhibit 4–1. Significance Determination for FAA Actions

One commenter wanted confirmation that the significance thresholds and factors to consider have not changed, except for the two instances indicated.

The FAA has made three substantive changes to the significance thresholds and factors to consider from Order 1050.1E, Appendix A. Two were identified in Paragraph 1–10 of the draft Order 1050.1F. In addition, the FAA has clarified that the Air Quality significance threshold includes instances where the action would increase the frequency or severity of an existing air quality standard violation.

The significance thresholds and factors to consider may, in some cases, look different in Order 1050.1F due to the new approach taken, which includes a new table with two categories of information to be considered when examining significance: ''thresholds of significance'' and ''factors to consider.'' See Exhibit 4–1 of the Order. The 1050.1F Desk Reference contains more information on determining significance for the environmental impact categories.

One commenter stated that the terms ''extensive'' and ''substantial'' are confusing and should be removed from Exhibit 4–1. Removal of these terms would achieve the same objective without creating confusion as to what rises to being ''extensive'' or ''substantial.''

The terms ''extensive'' and ''substantial'' are useful because they

qualify the factors to consider and indicate the need for more than a minor or insubstantial degree of impact from the proposed action. Although ''extensive'' and ''substantial'' are not specifically defined in the Order, these terms have ordinary definitions. ''Extensive'' is defined as ''having wide or considerable extent'' and ''substantial'' is defined as ''large in amount, size, or number'' (Merriam-Webster Online Dictionary available at *http://www.merriam-webster.com/*) These definitions are adequate for purposes of this Order. In addition, in many cases, use of these terms in Exhibit 4–1 is reflective of language within applicable special purpose laws.

One commenter suggested that the FAA include the results of consultation with resource agencies as factors to be considered in assessing impacts for specific resources.

The FAA has identified factors to consider for potential significant impacts in addition to significance thresholds, where such a threshold exists. The information and data considered during the consultation process should be examined in light of the identified factors to consider. Although the determination by the resource agency (*e.g.,* concurrence with FAA's adverse effect under the National Historic Preservation Act (NHPA) or a ''not likely to adversely affect'' finding under the Endangered Species Act (ESA)) is considered in FAA's decision, the resource agency's determination is not dispositive and therefore it is not appropriate to include the resource agencies' decision as a factor to consider for significance.

Two commenters asked that the FAA add information to Exhibit 4–1 stating that if an action is presumed to conform, the action is eligible for a CATEX, or if an air quality inventory conducted for a proposed action or a reasonable alternative shows no de minimis level would be exceeded for any criteria pollutant, it can be assumed the project would not cause significant air quality impacts for NEPA purposes and dispersion analysis is not needed in these instances. One commenter went further to state that for projects in attainment areas, the de minimis levels for maintenance areas should be used.

Exhibit 4–1 identifies the significance thresholds and factors to consider when determining whether a proposed action will have significant impacts. Introduction of other concepts into the exhibit, such as circumstances in which significant impacts do not occur, the applicability of CATEXs to specific actions, and actions that are presumed to conform under the General Conformity Rule, could cause confusion. However, the 1050.1F Desk Reference provides more information on how to determine significance for each environmental impact category, including whether or not a dispersion analysis is needed.

One commenter requested that the FAA provide guidance on the determination of significance for species that are not federally- or state-protected. For instance, large projects, such as a new airport or runway and their supporting components, may disturb many acres which may cause species that commonly occur to move to other areas. The commenter questioned if these impacts need to be assessed for significance.

Exhibit 4–1 includes factors to consider for Biological Resources, including non-listed species. Among the factors to consider for such species are: Substantial loss, reduction, degradation, disturbance, or fragmentation of native species' habitats or their populations. This is not limited to just federally- or state-protected species. All relevant impacts to species should be discussed and disclosed in the environmental documentation. The 1050.1F Desk Reference provides more guidance on how to consider Biological Resources.

One commenter suggested that the use of ''extirpation'' be changed to ''completely removing species from affected area'' as a better way to explain the concept.

The FAA retains the term ''extirpation'' which is defined as local extinction (the condition of a species which ceases to exist in the chosen geographic area of study, though it still exists elsewhere). The definition of extirpation is well understood and should not lead to any confusion because it is a term used in analysis for threatened and endangered species and the meaning remains the same regardless of whether it is applied to listed or non-listed species.

One commenter requested clarification as to whether all projects should complete Form AD–1006 for Farmlands. The commenter went further to recommend that if zoning of the site denotes farmland then the form should be completed. In addition, the commenter requested that a sentence be included to indicate that impact severity increases as the AD–1006 score approaches 260 points.

Exhibit 4–1 has a limited purpose to identify the significance thresholds and factors to consider when examining potential significance. The 1050.1F Desk Reference contains guidance on when to complete Form AD–1006. Not all projects require completion Form AD–1006. The form only needs to be completed if the FAA or applicant submits a request to the local Natural Resources Conservation Service (NRCS) field office for determination of whether the site is farmland subject to the Farmlands Protection Policy Act. The 1050.1F Desk Reference contains information explaining that the impact severity increases as the AD–1006 score approaches 260.

One commenter asked whether the evaluation of Hazardous Materials, Solid Waste, and Pollution Prevention is to screen alternatives to minimize hazardous waste remediation. The commenter stated that bullets three and four seem to add new criteria relative to significance that have not been considered before.

Exhibit 4–1 has a limited purpose to identify the significance thresholds and factors to consider when examining potential significance. This exhibit is not intended as a tool for screening alternatives to avoid or promote particular environmental outcomes. The criteria listed in Exhibit 4–1 for this environmental impact category are contained in Paragraph 10.2c of Order 1050.1E and thus are not new criteria. There are no requirements to select an alternative that minimizes hazardous waste remediation efforts.

One commenter recommended adding language from Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (see Section 2–203), in the factors to consider for Children's Environmental Health and Safety Risks explaining what specific areas are to be evaluated. Without this clarification, the text in this table may be interpreted more broadly than intended.

The FAA has decided not to include language from Executive Order 13045 in Exhibit 4–1. Exhibit 4–1 identifies factors to consider when evaluating significance. The 1050.1F Desk Reference chapter, Socioeconomics, Environmental Justice, and Children's Environmental Health and Safety, includes discussion of evaluating health and safety risks to children. This chapter relies upon the Executive Order to identify the considerations that would determine whether a project would lead to a disproportionate health or safety risk for children. As a result, it is unlikely that the text in Exhibit 4–1 will be interpreted more broadly than intended.

One commenter stated that the 2nd bullet in factors to consider for Environmental Justice could be interpreted to mean that individual environmental justice populations can

identify their own significance threshold.

The second bullet of the factors to consider in Exhibit 4–1 for Environmental Justice has been modified to state, ''[i]mpacts on the physical or natural environment that affect an environmental justice population in a way that the FAA determines is unique to the environmental justice population and significant to that population.'' The FAA has clarified the text to avoid any potential ambiguity or confusion. The purpose of this bullet is to recognize that in some circumstances, a significant impact may not occur under another environmental impact category's criteria, but that impact would be experienced by an environmental justice population in a way that is significant to the population due to unique circumstances of the population. In these situations, the factors to consider for Environmental Justice will ensure that the potential for significance under environmental justice considerations is examined and not disregarded.

One commenter stated that the wording ''exceeds water quality standards'' is unclear and could be interpreted to mean meeting the standards or performing better than the standard.

The FAA will retain the language ''exceeds water quality standards'' as this term is widely used when applying water quality standards. Due to the context of the statement referring to a significance factor for Surface Waters and Ground Waters, it is unlikely it would be misinterpreted to mean ''performing better than the standard.'' The language was contained in 1050.1E and the FAA is not aware of any instances where this language caused confusion or was misapplied.

*One commenter stated that the FAA should define what a significant encroachment is and identify the factors that would be used to determine significance under NEPA, since not all the factors involve environmental resources addressed under NEPA (*i.e., *flooding impacts on human safety and on a transportation facility).*

In the final Order, the FAA has removed the factor to consider for Floodplains that referenced significant encroachment. The 1050.1F Desk Reference provides more information on what to consider in determining if there is a significant impact under NEPA for floodplain impacts. A determination of a significant encroachment does not necessarily mean a significant impact under NEPA.

One commenter suggested adding tribal agencies, as appropriate, in the list of agencies setting water quality standards, because some tribes have assumed the authority to set those standards.

The FAA has added tribal agencies to the list of agencies that set water quality standards for both ground and surface waters.

Paragraph 4–4. Mitigation

Paragraph 4–4.c Mitigation Made as a Condition of FAA Approval

One commenter asked how the FAA plans to monitor compliance with mitigation commitments.

The FAA plans to monitor the FAA compliance with mitigation commitments on a case-by-case basis, depending on the commitments made and the most reasonable way to monitor them. For example, in cases where environmental commitments can be monitored through an already existing EMS, the compliance of mitigations could be monitored through EMS audits.

Paragraph 4–4.d. Monitoring

One commenter recommended that the FAA include a statement that the FAA will consult with the appropriate resource or expertise agency in applying professional judgment to develop a monitoring program.

The FAA uses standards of professional judgment and the rule of reason to determine when and how to monitor mitigation implementation and effectiveness (see Paragraph 4–4.d). When identifying mitigation measures for specific environmental impact categories, the FAA will coordinate with subject matter experts that have expert knowledge, training, and experience related to the resource(s) potentially impacted by the proposed action (see Paragraph 2–3.6.b). If the FAA does not have the relevant expertise to monitor mitigation, professional judgment and rule of reason would dictate the FAA reach out to an appropriate subject matter expert to help develop the monitoring program.

Chapter 5. Categorical Exclusions

Paragraph 5–1. General

Several commenters expressed concern over who gets to decide when an action is within the scope of a CATEX and when proposed actions have extraordinary circumstances. The commenters stated this is highly subjective and susceptible to uneven interpretation.

The FAA is ultimately responsible for complying with NEPA. Part of that responsibility is determining which actions are covered within the scope of an existing CATEX and which actions should be analyzed in an EA or EIS. Order 1050.1F provides the FAA's internal procedures to NEPA practitioners on how to make these types of determinations in compliance with NEPA and the CEQ Regulations.

Although determination of whether an action is within the scope of a CATEX and whether there are extraordinary circumstances seems subjective, the FAA uses professional judgment and rule of reason to determine if an action has the potential for significant impacts. The FAA also relies on guidance provided in the 1050.1F Desk Reference to provide more information on what to analyze in determining significance for each environmental impact category.

Paragraph 5–2. Extraordinary Circumstances

One commenter questioned whether Paragraph 5–2.a(1) should be ''or'' rather than ''and'' so that extraordinary circumstances occur when a circumstance exists ''or'' when there are significant impacts. The commenter suggested that as written, a significant impact to a resource not protected by a special purpose law (community noise, for example) would not be considered an extraordinary circumstance.

The statement is correct as written in Order 1050.1F. Extraordinary circumstances exist if one of the circumstances identified in the Paragraph 5–2.b is present and there may be a significant impact. The list of circumstances provides situations where a NEPA practitioner would have to evaluate whether there is potential for a significant impact. If one or more of the identified circumstances exists, the NEPA practitioner would determine if there may be a significant impact.

In reference to the example the commenter provides, Paragraph 5–2.b(7) provides the circumstance ''an impact on noise levels of noise sensitive areas,'' which would include community noise. Also note that the circumstance in Paragraph 5–2.b(12) states the likelihood to directly, indirectly, or cumulatively create a significant impact on the human environment. The presence of this circumstance applies to any potential for significant impacts and addresses the commenter's concern that a resource not protected by a special purpose law would not be considered an ''extraordinary circumstance even if it had significant impacts.''

Several commenters asked whether the presence of a circumstance in Paragraph 5–2.b would prevent the application of a CATEX.

As the introduction to Paragraph 5–2.b states, ''An extraordinary circumstance exists if a proposed action involves any of the following circumstances and has the potential for a significant impact.'' The list of circumstances provides situations where a NEPA practitioner would have to evaluate whether there is a potential for a significant impact. If one or more circumstances exist, the NEPA practitioner would determine if there may be a significant impact, thus creating an extraordinary circumstance and preventing the use of a CATEX. Therefore, the mere presence of a circumstance listed in Paragraph 5–2.b would not prevent the application of a CATEX. Determination of whether a circumstance may have a significant impact can take into consideration mitigation measures and permit requirements.

One commenter stated that the FAA should reconsider the way in which it applies extraordinary circumstances reviews to projects potentially subject to a CATEX because the current practice results in EAs being prepared in too many circumstances where a CATEX would have been sufficient. The commenter stated that changes to the FAA's application of extraordinary circumstances should be based on the results of NEPA documents completed in the last decade.

The FAA has reviewed the list of extraordinary circumstances and made changes where warranted. It is important to note that an EA is not automatically triggered by the mere existence of one or more of the circumstances identified in Paragraph 5–2.b. Preparation of an EA for a project that would otherwise be subject to a CATEX is required under Order 1050.1F only when one or more of the listed circumstances exist and the proposed action has the potential to cause a significant impact. Where appropriate, previous EAs resulting in FONSIs can be used as evidence that the proposed action does not have the potential to have significant impacts and therefore does not have extraordinary circumstances. However, the project-specific information would still need to be considered to determine if there are project-specific circumstances that have the potential to cause significant impacts. Whether an EA should be prepared for a proposed action is a matter of professional judgment and must be addressed on a case-by-case basis.

One commenter stated the draft Order 1050.1F is in conflict with the well-established, clearly written NEPA regulations that require consideration of cumulative impacts because the FAA is ignoring cumulative impacts in their CATEXs.

FAA Order 1050.1F is consistent with the CEQ Regulations and does consider cumulative impacts when deciding what actions can be categorically excluded. In fact, the definition of a CATEX is a ''category of actions which do not individually or cumulatively have a significant effect on the human environment . . .'' (see 40 CFR 1508.4). The FAA's CATEXs have undergone review by DOT, CEQ, and the public prior to being established. Furthermore, the potential for a significant cumulative impact is a factor to be considered when examining the possibility of extraordinary circumstances associated with use of a CATEX.

One commenter stated that disputes about the presence of extraordinary circumstances should be resolved by a neutral third party and not simply at the discretion of the administering agency.

Decisions regarding the appropriate level of NEPA review, including decisions about the applicability of CATEXs and the presence of extraordinary circumstances, are the very type of decisions that NEPA has entrusted to the discretion of the agencies that must implement the statute. The Order's statement that NEPA practitioners should consult AEE or AGC when in doubt about the existence of extraordinary circumstances is, therefore, appropriate. This portion of the Order was not intended to suggest a conflict arising between the FAA and a third party regarding whether an extraordinary circumstance exists. Rather, this is meant to provide clarity to FAA NEPA practitioners that if they are unsure about whether there are extraordinary circumstances, AEE and AGC have NEPA expertise and can aid the agency's NEPA practitioners in resolving such concerns.

One commenter questioned who is responsible for determining the nature of the opposition (whether an action is highly controversial on environmental grounds) as identified in Paragraph 5–2.b(10) and what measurement will be used to make this determination.

The FAA is ultimately responsible for the determination of whether an action is highly controversial on environmental grounds. FAA Order 1050.1F provides internal guidance to the FAA's practitioners on how to comply with NEPA. Decisions regarding whether impacts from an FAA action are likely to be highly controversial on environmental grounds are the very type of decisions that NEPA has entrusted to the discretion of the agencies that must implement the statute. Under Paragraph 5–2.b(10), the term ''highly controversial on environmental grounds'' means there is a substantial dispute involving reasonable disagreement over degree, extent, or nature of a proposed action's environmental impacts or over the action's risks of causing environmental harm. This would be determined on a case-by-case basis using professional judgment and would depend on the characteristics of the community to be impacted (*i.e.,* minority, low income, children, etc.) and the basis for the community's opposition. If the FAA expects that an action is likely to be highly controversial on environmental grounds, this factor would lend some persuasive weight to the option of preparing an EA for the project.

Paragraph 5–3. Categorical Exclusion Documentation

Paragraph 5–3.b. Additional Documentation

One commenter stated that Paragraph 5–3.b(1) should be modified to ''actions that would affect a sensitive resource and, consequently, trigger compliance with a special purpose law protecting that resource.''

The referenced text currently states ''actions that are likely to affect sensitive resources sufficient to heighten concerns regarding the potential for extraordinary circumstances.'' The suggested text changes add the condition that the resource is protected by a special purpose law. This new language is too narrow. Not all sensitive resources that should be considered when determining whether to prepare additional CATEX documentation are protected by special purpose laws.

One commenter stated that Paragraph 5–3.b(4) be qualified with ''on environmental grounds.''

The intent of Paragraph 5–3.b is to describe situations where the FAA may prepare CATEX documentation in the project record to document the decision that the proposed action is within the scope of a CATEX and no extraordinary circumstances exist. This is in contrast to a determination regarding existence of extraordinary circumstances due to impacts of a project being highly controversial on environmental grounds under 5–2.b(10). Proposed actions that have a high level of public opposition have an increased risk of litigation. The FAA can use this documentation in the event of litigation to demonstrate the basis for the decision the FAA has made. Thus, the language in Paragraph

5–3.b(4) should not be qualified with ''on environmental grounds.''

Paragraph 5–3.d. Documentation

One commenter stated that since there is no prescribed format for a CATEX, the LOB/SOs get to 'cherry pick' the documentation and information.

Although there is not a prescribed format, the Order does state that documentation prepared for a CATEX determination should be concise and the extent of documentation should be tailored to the type of action involved and the potential for extraordinary circumstances. Paragraph 5–3.d of the Order also sets forth the information that should be presented if documentation is prepared, including the CATEX(s) used, a description of how the proposed action fits within the category of actions described in the CATEX, and an explanation that there are no extraordinary circumstances that would preclude the proposed action from being categorically excluded.

One commenter requested that the FAA provide additional explanation as to what constitutes a documented CATEX.

Paragraph 5–3.d specifies that when additional documentation is warranted, such documentation should be concise and show that a specific CATEX was determined to apply to a proposed action. The documentation should be tailored to the type of action involved and the potential for extraordinary circumstances. The documentation should cite the CATEX(s) used, describe how the proposed action fits within the category of actions described in the CATEX, and explain that there are no extraordinary circumstances that would preclude the proposed action from being categorically excluded. FAA is not prescribing a specific format for a CATEX in order to allow flexibility for LOBs to develop their own standards for what constitutes a documented CATEX.

One commenter requested more information on how to prepare an administrative record for a CATEX as CEQ recommends.

Order 1050.1F specifies the CATEX documentation should cite the CATEX(s) used, describe how the proposed action fits within the category of actions described in the CATEX, and explain that there are no extraordinary circumstances that would preclude the proposed action from being categorically excluded. The Order has added the following language: ''[t]he documentation of compliance with special purpose laws and requirements may either be included in a documented CATEX or may be documented separately from a CATEX.'' The FAA has decided not to provide specific information on establishing an administrative record.

This is consistent with CEQ's CATEX Guidance, which states that ''documentation may be appropriate to demonstrate that the proposed action comports with any limitations identified in prior NEPA analysis and that there are no potentially significant impacts expected as a result of extraordinary circumstances. In such cases, the documentation should address proposal-specific factors and show consideration of extraordinary circumstances with regard to the potential for localized impacts. It is up to agencies to decide whether to prepare separate NEPA documentation in such cases or to include this documentation in other project-specific documents that the agency is preparing.''

CEQ's CATEX Guidance does make a reference to an administrative record when preparing a record for a new CATEX. ''The administrative record for a proposed CATEX should document the experts' credentials (*e.g.,* education, training, certifications, years of related experience) and describe how the experts arrived at their conclusions.'' If this is what the commenter is referring to, the CATEX Justification Package prepared for the FAA's new and revised CATEXs would serve as this documentation. Since creation of new CATEXs is not done very often outside of an Order update, the process for proposing a new CATEX has not been added to Order 1050.1F. For more information regarding proposing and preparing a justification package for a new CATEX, please consult with AEE.

One commenter questioned whether deficient documentation of CATEXs is encouraged by the statement ''a determination that a proposed action qualifies for a CATEX is not considered deficient due to lack of documentation provided that extraordinary circumstances have been considered.''

Neither NEPA nor CEQ's NEPA implementing regulations require documentation for application of a CATEX to a particular proposed action. As noted above, CEQ has issued guidance regarding the establishment and use of CATEXs. This guidance, in keeping with the CEQ Regulations, does not require documentation for each proposed action an agency may implement under a CATEX. The guidance states, ''[w]hen applying a categorical exclusion to a proposed action, Federal agencies face two key decisions: (1) Whether to prepare documentation supporting their determination to use a categorical exclusion for a proposed action and (2) whether public engagement and disclosure may be useful to inform determination about using categorical exclusions.'' See CEQ's CATEX Guidance. Thus, the CEQ Regulations and the guidance on this subject have entrusted the decision whether to document application of a CATEX to the discretion of the agencies subject to the requirements of NEPA. The decision to document a CATEX is made on a case-by-case basis. For some Federal actions there is no reasonable expectation that the proposed action could cause any environmental impacts. These actions would not require CATEX documentation. Paragraph 5–3.b identifies situations where CATEX documentation is recommended. The portion of the Order identified in this comment specifies that the FAA may choose to apply a CATEX to a particular proposed action with or without documentation if that action is within the scope of the identified CATEX and the potential for extraordinary circumstances was considered. This is appropriate under the statute, regulations, and CEQ guidance.

Several commenters stated that by indiscriminately applying CATEXs, the agency proposes to preclude consideration of actions that have unquestionably created notable negative impacts on public health and the environment, and thus should not be categorically excluded.

The FAA does not indiscriminately apply CATEXs. Before a CATEX can be applied, a proposed action must undergo review to determine if it is within the scope of an existing CATEX and whether there are any extraordinary circumstances that would preclude the use of the CATEX in that instance. In determining whether there are extraordinary circumstances, the FAA will use professional judgment and rule of reason, which includes examining the action based on the FAA's experience with similar actions.

Paragraph 5–4. Public Notification

Several commenters stated the public should be engaged or notified before a CATEX is applied and the proposed action is in effect. Additionally, they stated that the use of a CATEX effectively shuts out public involvement.

The FAA's public involvement requirements are consistent with CEQ's requirements for public notice and comment. The level of public involvement is commensurate with the level of potential significant impacts. Actions that are categorically excluded do not have the potential for individual or cumulative significant impacts, except when there are extraordinary

circumstances, and therefore merit minimal public involvement. Where no extraordinary circumstances are present, public involvement is generally not required. However, the FAA has acknowledged that there may be circumstances where public involvement would be appropriate on a case-by-case basis (See Paragraph 5–4).

To establish a CATEX, the FAA needs to prepare a CATEX justification package that does undergo public review. The FAA must demonstrate that the categorically excluded actions have no potential for significant impacts individually or cumulatively. This justification package needs to be reviewed and approved by DOT and CEQ, and have a public notice and comment period.

One commenter specified that any noise or land use impacts should involve the citizens who would be affected, even when the action would qualify for a CATEX. This involvement should include a reasonable comment period and a method to challenge the findings.

The FAA public notification and involvement requirements are consistent with CEQ Regulations and guidance. Public notification and involvement are commensurate with the potential for significant impacts. Noise and land use impacts are handled in the same manner as other environmental impact categories.

One commenter specified that although there is no formal public involvement process required for the application of CATEXs, the FAA should notify and consult with relevant airport sponsors before applying them. The commenter specifically mentioned coordination on the implementation of the two legislative CATEXs.

The FAA notes the concern that airport sponsors may not be notified when a CATEX is applied. Paragraph 2–4.3, Intergovernmental and Interagency Coordination, was amended to indicate that coordination should include airport sponsors when actions would affect operations at an airport. This would cover any action taken following application of a CATEX that affect operations at an airport, including actions that are covered under the two legislative CATEXs.

One commenter stated that the CATEX public notification paragraph should specify that some special purpose laws require notification even in cases when an action has been categorically excluded.

A statement was added to Paragraph 5–5, Other Environmental Requirements, that there may be public notification requirements under special purpose laws for actions subject to a CATEX. Information on other environmental requirements that may apply to proposed actions is provided in the 1050.1F Desk Reference.

Paragraph 5–5. Other Environmental Requirements

One commenter suggested the FAA include information that compliance with special purpose laws would lessen the proposed action's impacts and possibly avoid a significant impact.

The FAA has decided not to insert additional language stating that compliance with special purpose laws would lessen the proposed action's impacts and possibly avoid significant impacts. Compliance with special purpose laws does not necessarily lessen an action's impacts. Compliance with special purpose laws and requirements may, in some cases, generate mitigation measures that reduce the overall impact of a proposed action. Determining whether this is true with respect to any particular proposed action is necessarily fact-specific. Where warranted, mitigation measures that result from consultation with agencies on special purpose laws can help provide documentation to validate the use of a CATEX.

One commenter stated the FAA should emphasize that public review periods for NEPA documentation can run concurrently with any review period for special purpose laws.

In addition to the language in Paragraph 2–5.2.a on special purpose laws and requirements, the FAA has ensured that references to public notification and comment periods on special purpose laws in Chapters 5–7 also contain language indicating that these comment periods can run concurrently with NEPA review periods.

Paragraph 5–6. The Federal Aviation Administration's Categorical Exclusions

One commenter stated the FAA should not have any CATEXs.

40 CFR 1507.3(b)(2)(ii) specifically authorizes agencies to identify actions that ''normally do not require either an environmental impact statement or environmental assessment.'' The CATEXs provided in Order 1050.1F have been determined to not have the potential for significant impacts either individually or cumulatively. The FAA's CATEXs have undergone review by the DOT, CEQ, and the public prior to being established.

Several commenters specified the FAA should not have CATEXs for flight patterns, runway extensions, or ALPs.

The FAA must go through an approval process to establish a CATEX. In order to establish a CATEX, the FAA must prepare a CATEX justification package that shows the agency's determination that these types of actions, absent extraordinary circumstances, do not have the potential for individual or cumulative significant impacts. This determination is based on the FAA's experience with historic implementation of these types of actions. This package must be approved by DOT and CEQ, and provided to the public.

Several commenters indicated a belief that the FAA should not make CATEXs available for a variety of the specific actions addressed in Chapter 5 of Order 1050.1F.

The FAA must go through an approval process to establish a CATEX. In order to establish a CATEX, the FAA must prepare a CATEX justification package that shows the agency's determination that these types of actions, absent extraordinary circumstances, do not have the potential for individual or cumulative significant impacts. This determination is based on the FAA's experience with historic implementation of these types of actions. This package must be approved by DOT and CEQ, and provided to the public.

Many of the CATEXs in Order 1050.1F remain unchanged and have been in effect for a number of years. Even if the action is the type of action that would normally be categorically excluded, the FAA must determine if there are extraordinary circumstances that would preclude the use of a CATEX.

The only two CATEXs that have not undergone review by the DOT, CEQ, and the public prior to being established were the legislative CATEXs authorized under Section 213(c) of the FAA Reauthorization of 2012. It is not uncommon for Congress to provide for specific CATEXs or state in the legislation that certain actions should be presumed to have no significant impacts and therefore should be categorically excluded, as was the case for the two legislative CATEXs provided for in Section 213 (c) of the FAA Reauthorization of 2012. These types of CATEXs are provided for by law rather than being created at the discretion of the agency. Because these legislative CATEXs are not the product of administrative discretion, the FAA need not prepare a CATEX justification package for submission to CEQ. See footnote 1 of the CEQ's CATEX Guidance.

One commenter expressed confusion and concern with regards to the three-acre limit in some of the CATEXs.

The three-acre limit is the FAA's limit for acquiring land for the construction of a building under CATEX 5–6.4.r (purchase, lease, or acquisition of three acres or less of land with associated easements and rights-of-way for new facilities) Limiting acres of land decreases the potential for impacts. There is potential for significant impacts with developed and undeveloped land. When land is already developed, there are potential impacts from displacement or prior site contamination. When land is undeveloped, potential impacts include but are not limited to impacts to habitat, soils, and historical artifacts. When this CATEX was established, the FAA limited these actions to three acres or less to limit the potential for significant impacts, although the potential for significant impacts under extraordinary circumstances must be examined before application of any CATEX.

The new CATEX involving solar and wind projects, CATEX 5–6.3.i, was limited based on acreage because of potential impacts with the construction and operation of these structures. The larger the acreage for solar and wind projects, as with any project, the greater potential for environmental impacts. In particular, larger solar and wind projects raise the concern of impacts to bird and bat populations. For additional information on the reasons for the acreage limitations applied to the new and modified CATEXs, please see the CATEX Justification Package available at (*http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/*).

Some CATEXs do not specify acreage because the type of projects that fall within that CATEX do not need limitations on the acreage. For example see CATEX 5–6.4.b, which covers acquisition of land and relocation associated with a categorically excluded action. In this case, the acquisition of land covered by that CATEX is limited by the nature of the acquisition and can only be applied if the purpose of acquisition is within the scope of another CATEX.

Two other CATEXs have been limited to one acre or less: CATEX 5–6.4.ee and CATEX 5–6.4.ff, which involve hazardous wastes or hazardous substances. These were limited based on the FAA's experience that the nature of these activities is normally within one acre or less. Prior FAA actions used to justify these CATEXs were less than one acre each. No further research was conducted or prepared for similar actions that would be greater than one acre to increase this acreage amount. By nature of the CATEX, the FAA is not determining that these types of actions greater than one acre would be significant, but rather, we did not invest resources to justify actions greater than one acre because the FAA does not have a need for this CATEX to be greater than one acre. For additional information on the concerns of potential impacts and the reasons for the limitations for the new and modified CATEXs, please see the CATEX Justification Package available at (*http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/*).

For actions that are not within the scope of a CATEX or that involve extraordinary circumstances, an EA or EIS must be prepared.

Paragraph 5–6.1. Categorical Exclusions for Administrative/General Actions

One commenter recommended adding air-space sectorization and Air Traffic Standard Operating Procedures and Letters of Authorization to the list of CATEXs for administrative and general actions.

The FAA is not adding additional CATEXs to Order 1050.1F at this time. The FAA has established several new CATEXs in this update to Order 1050.1 which have already undergone review by DOT, CEQ, and the public.

In order to qualify for a CATEX, the FAA needs to prepare a CATEX justification package that demonstrates there is no potential for significant impacts individually or cumulatively. This justification package needs to be reviewed and approved by DOT and CEQ, and have a public notice and comment period.

Depending on what actions the commenter is referring to, these actions may already be within the scope of existing CATEXs. The commenter is encouraged to work with their FAA LOB/SOs contacts to determine if these actions are already within the scope of an existing CATEX. If these actions are not within the scope of an existing CATEX, the commenter can work with their FAA LOBs to help prepare a justification package for inclusion in a future update of the Order.

5–6.1.u. One commenter stated concern over CATEX 5–6.1.u [Approval under 14 CFR part 161, Notice and Approval of Airport Noise and Access Restrictions, of a restriction on the operations of Stage 3 aircraft that does not have the potential to significantly increase noise at the airport submitting the restriction proposal or at other airports to which restricted aircraft may divert. (ARP)]. The commenter indicates a belief that application of a CATEX to these actions does not take into account the needs of the local community and environment.

Based on the comment, it seems the commenter may be confused with regards to a Notice and Approval of Airport Noise and Access Restrictions, since these actions tend to reduce airport noise by placing restrictions on the operation of Stage 3 aircraft rather than approve actions that would increase the use of Stage 3 aircraft. There are no changes to this CATEX in Order 1050.1F.

Paragraph 5–6.3. Categorical Exclusions for Equipment and Instrumentation

CATEX 5–6.3.g. One commenter wanted verification whether the replacement/upgrade of power and control cables for existing facilities and equipment [CATEX 5–6.3.g] must occur in the same location or along the same right-of-way as an existing cable.

The FAA will apply professional judgment and rule of reason on a case-by-case basis on whether the CATEX would apply for cable that is replaced or upgraded. The more the replacement/upgrade occurs in the same location as the original cables, the less likely there would be extraordinary circumstances precluding the use of the CATEX.

CATEX 5–6.3.i. One commenter was concerned with the potential impacts to both bird and bat populations from solar and wind operations.

The FAA has added specific language into the CATEX that these actions may not cause significant impacts to bird or bat populations to highlight this extraordinary circumstance. This language is the same language used for Department of Energy's CATEX for wind turbines that was used as a benchmark when creating this CATEX.

Paragraph 5–6.4. Categorical Exclusions for Facility Siting, Construction, and Maintenance

One commenter was concerned over the application of CATEXs for Facility Siting, Construction, and Maintenance [actions involving acquisition, repair, replacement, maintenance, or upgrading of grounds, infrastructure, buildings, structures, or facilities that generally are minor in nature] because ''minor in nature'' allows for interpretation.

The commenter references the introductory text for Paragraph 5–6.4, the general category for Facility Siting, Construction, and Maintenance CATEXs. This category of actions has 32 individual CATEXs which outline the

types of actions that the FAA has determined to not have individual or cumulative impacts. Therefore, the language ''minor in nature'' in the introduction to this category of actions is not lacking more definitive boundaries or open to boundless interpretation. To apply these CATEXs, the FAA must determine the project is within the scope of one of the specific actions listed in the CATEXs and there are no extraordinary circumstances, as outlined in Paragraph 5–2.

CATEX 5–6.4.a. One commenter was concerned with who gets to determine acceptable service reduction levels in the absence of community input.

Level of service is a grading system that describes the amount of surface congestion on local roads, highways, interchanges, and interstates. It was developed by the Federal Highway Administration using the letter A to represent the least congestion and F for the most congested roads. The classification accounts for the speed of the vehicles and the number of vehicles per lane and is based on peak hour traffic conditions. The FAA would evaluate the project on these criteria to determine whether an action would change the level of service.

CATEX 5–6.4.b. One commenter expressed the belief that acquisition of land and relocation associated with a categorically excluded action should come under public review because these actions are often arbitrary and whimsical.

The FAA's policy toward public notification of the use of CATEXs is discussed in Paragraph 5–4 and is consistent with CEQ guidance. The FAA public notification requirements are consistent with CEQ Regulations and guidance. Public notification and involvement are commensurate with the potential for significant impacts. Public notification for CATEXs is not required. The decision of whether to notify the public is made on a case-by-case basis.

CATEX 5–6.4.c. One commenter questioned what ''significantly change the impact on the environment'' means for CATEX 5–6.4c [Installation, modification, or repair of radars at existing facilities that conform to the current American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) guidelines for maximum permissible exposures to electromagnetic fields and do not significantly change the impact on the environment of the facility. (All)]

The text ''significantly change the impact on the environment'' refers to a determination of significance that is made by considering the instruction provided in Paragraph 4–3.3 of this Order. Additional guidance on making a determination of significance for each environmental impact category is provided in the 1050.1F Desk Reference, which is publically available. This CATEX was not modified from Order 1050.1E and the FAA is unaware of any evidence arising through its use and application that would undermine its continued validity.

CATEX 5–6.4.e. Two commenters wanted clarification for CATEX 5–6.4.e with regards to what ''significant erosion or sedimentation'', ''would not result in significant noise increase,'' and ''significant impacts on air quality'' mean.

When modifying the CATEXs, the FAA decided that it was important to identify the potential impacts of concern that were most likely to be associated with the particular CATEX under discussion thus highlighting potential extraordinary circumstances that may require further analysis in an EA or EIS. For this reason, CATEX 5–6.4.e includes reference to the most likely environmental impacts of concern associated with a runway extension, including erosion or sedimentation, noise, and air quality. The FAA will still evaluate all the other circumstances listed in Paragraph 5–2.b to determine if there are circumstances that would have the potential to cause significant impacts (*i.e.,* extraordinary circumstances would exist that would preclude the use of a CATEX).

In determining whether there is significant erosion or sedimentation, the FAA will rely on an analysis of context and intensity in accordance with CEQ's definition of significance. The FAA will also consider the significance thresholds and factors to consider for the environmental impact categories in Exhibit 4–1 to determine other potential significant impacts. For more information on this CATEX, please see the FAA's CATEX Justification Package available at: (*http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/*).

CATEX 5–6.4.h. One commenter asked for additional clarification of what ''substantial expansion'' means in CATEX 5–6.4.h. The commenter also indicated that the reference to the presumed to conform list in this CATEX may inadvertently limit application of this CATEX to those projects specifically mentioned in the presumed to conform list, which does not seem appropriate.

The CATEX was modified to add reference to the presumed to conform list to help NEPA practitioners determine what the concerns were regarding ''substantial modification.'' It was not added to limit the activities to those identified in the presumed to conform notice.

In addition to the typical potential impacts from construction, the concern with substantial modification to existing facilities is the potential to cause indirect air quality impacts due to change in operations, passengers, etc. The FAA considered explicitly listing the criteria that were used to create the presumed to conform list within the CATEX; however, during internal review of the CATEX, the criteria caused more confusion than benefit to the FAA's NEPA practitioners. The presumed to conform criteria include expansion of existing buildings with a construction footprint less than 185,891 square feet. In addition, the action must not increase any of the following:

- The number of passengers boarding any scheduled flight;
- the number of aircraft operations the airport or launch facility serves;
- the tonnage of cargo the airport or launch facility handles;
- the cargo payload placed on a scheduled flight; or
- the size of the aircraft that the airport or launch facility can serve.

In addition, the expansion cannot change the airport or launch facility's runway use.

CATEX 5–6.4.i. One commenter asked why ''provided no hazardous substances or contaminated equipment are present on the site of the existing facility'' was added to CATEX 5–6.4.i. In considering extraordinary circumstances for a CATEX, if a remediation plan has been developed and approved by any requisite agencies, it is unclear why an EA would be warranted for demolition of such facilities.

The language identified in the comment does not represent a substantive change to the CATEX as compared to its presentation in 1050.1E. The original CATEX [Paragraph 310i in Order 1050.1E] had similar language: ''provided no hazardous substances contamination is present on the site or contaminated equipment is present on the site.'' The FAA did not propose removing this limitation in Order 1050.1F. In order to do so, FAA would have to prepare a detailed CATEX justification package substantiating that even in instances where hazardous substances or contaminated equipment is present on the site there would not be a potential for significant impacts.

CATEX 5–6.4.z. One commenter asked for clarification that CATEX 5–6.4.z can apply to trees occurring off airport.

The commenter is correct that CATEX 5–6.4.z can apply to trees located off

airport property. Actions taken under CATEX 5–6.4.z can be distinguished from actions taken under CATEX 5–6.4.l since CATEX 5–6.4.z only involves topping or trimming of trees to prevent obstacles to air navigation and does not involve ground disturbance or removal of existing structures. In contrast, CATEX 5–6.4.l is restricted to actions occurring on airport property, commercial space launch site property, or property owned or leased by the FAA because it permits ground disturbance and removal of existing structures.

CATEX 5–6.4.bb. One commenter sought clarification as to what constitutes ''extensive business or residential relocation'' as specified in CATEX 5–6.4.bb.

CATEX 5–6.4.bb allows for land acquisition to establish an RPZ or for other aeronautical purposes and does not limit the amount of land that can be acquired. One of the impacts of concern with the use of this CATEX is the potential for significant impacts as the number of businesses or residents that are required to relocate increases within the area. The FAA did not define a number of residents or businesses that would need to be affected and will evaluate each proposed action on a case-by-case basis as to whether an action has the potential to involve ''extensive'' business or residential relocation. However, the more residents or businesses that could be affected, the more likely the CATEX would not apply.

CATEX 5–6.4.ff. One commenter stated it is unclear why the FAA limited this CATEX to one acre or less, if the work plan is subject to an approved remediation plan.

This is a new CATEX. The activities included in the CATEX are required for conducting in-situ environmental remediation, with limited removal actions of hazardous substances, hazardous wastes, or other regulated substances. These actions must be done in accordance with industry best management practices and a remedial action plan or remedial design document approved by the appropriate or relevant governmental agencies. The FAA used the following sources of information in deciding what activities could be covered under the CATEX: (1) NEPA analyses contained in EAs prepared for previously-conducted FAA actions that included similar activities and which received FONSIs; (2) professional judgment and expert opinion regarding the environmental impacts of activities normally conducted during environmental remediation for the FAA and other organizations; and (3) comparison with CATEXs established by other agencies.

The total overall area impacted in these types of FAA actions is typically less than one acre, even at FAA facilities located on larger developed properties. The FAA is limiting the proposed CATEX to areas less than one acre in size to avoid potential impacts to environmental resources outside the area. For more information, please see the justification prepared for this CATEX, which is available at: (*http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/draft_faa_order/*).

Paragraph 5–6.5. Categorical Exclusions for Procedural Actions

CATEX 5–6.5.g. One commenter stated that the reference to RNAV/RNP systems is ambiguous and should be clarified in CATEX 5–6.5.g. The commenter stated that in the past, this paragraph has been cited in the establishment of new PBN procedures which is wrong because the system referred to is the electronic equipment used by aircraft to navigate, not the mapping of a flight path.

CATEX 5–6.5.g. states, ''[E]stablishment of Global Positioning System (GPS), Flight Management System (FMS), Area Navigation/Required Navigation Performance (RNAV/RNP), or essentially similar systems that use overlay of existing flight tracks. For these types of actions, the Noise Integrated Routing System (NIRS) Noise Screening Tool (NST) or other FAA-approved environmental screening methodology should be applied. (ATO, AVS)''

This CATEX is categorized under section 5–6.5 Categorical Exclusions for Procedural Actions and applies to airspace and air traffic procedures. It allows for the establishment of overlay procedures that use GPS, FMS, RNAV/RNP, or other similar systems. This is not for the establishment of electronic equipment, as the commenter has stated. This CATEX is limited to the establishment of new PBN procedures that create a flight track that overlays an existing flight track. This CATEX could not be applied to new PBN procedures that create new flight tracks that do not overlay existing flight tracks.

CATEX 5–6.5.i. Two commenters asked for clarification on how to evaluate new procedures or modification of procedures conducted below 3,000 feet that do not cause traffic to be routinely routed over noise sensitive areas.

For actions below 3,000 feet, ATO may use the Noise Screening Tool or the Air Traffic Guidance Document, as described in the Order 1050.1F Desk Reference. The Air Traffic Guidance Document is designed to step the user through a series of pre-screening tests to determine whether there is no potential noise impact or if additional screening or noise analysis will be needed. For more information on how to evaluate noise impacts for FAA actions, please see Chapter 11 of the 1050.1F Desk Reference, Noise and Noise-Compatible Land Use.

Chapter 6. Environmental Assessments and Findings of No Significant Impact

Paragraph 6–1. General

One commenter suggested including references to the applicant in Paragraph 6–1.a and Paragraph 6–1.b since applicants, such as airport sponsors, also prepare EAs.

Although some LOBs/SOs have applicants prepare EAs, the NEPA responsibility rests with the FAA. Paragraph 6–1.a has been modified to remove emphasis of the LOB/SO. However, the FAA has retained the reference to LOB/SOs in Paragraph 6–1.b since the responsible FAA official has the responsibility to determine whether the proposed action is covered under an existing NEPA document (see Paragraph 2–3.2.a(2)). Therefore it is more appropriate to encourage LOB/SOs to build upon prior EAs or EISs to the extent data in those documents remains valid.

One commenter recommended combining the subparagraphs of Paragraph 6–1 to explain that the responsible FAA official recommends a FONSI, while the approving official makes the final determination that a FONSI is appropriate.

The FAA has revised Paragraph 6–1 to clarify the responsibilities of the responsible FAA official. Reference to the FAA approving official has been removed to avoid any confusion.

One commenter stated that it is unclear whether the FAA is encouraging the preparation of joint NEPA and state-NEPA equivalent documents.

Paragraph 6–1.a(3), referenced by the commenter, is intended to encourage the integration of NEPA with special purpose laws, not the preparation of joint NEPA and state NEPA-equivalent documents. This language has been modified to make the intent clearer.

With reference to joint NEPA and state NEPA-equivalent documents, the FAA encourages the preparation of joint NEPA and state NEPA-equivalent documents where it would reduce delay and make the process more efficient. The FAA also recognizes that preparing

joint documents can be challenging due to the differences between NEPA and some state-level environmental review requirements. When joint documents are prepared, the FAA must ensure that all of the requirements under Order 1050.1F are adhered to (see Paragraphs 2–3.4.j and 2–3.5.f of the Order).

One commenter suggested adding wording about interdisciplinary analysis in Paragraph 6–1.a(3) to be consistent with the requirements of 40 CFR 1501.2(a).

The referenced paragraph refers to integrating applicable special purpose law review, consultation, and public involvement requirements within NEPA planning and documentation. It does not make sense to refer to an interdisciplinary approach in this context. However, an interdisciplinary approach is discussed in Paragraph 1–7.

Paragraph 6–2.1. Environmental Assessment Format

One commenter asked for additional information on how Paragraphs 405d and 405e of Order 1050.1E differ from Paragraph 6–2 of the draft Order 1050.1F.

Paragraphs 405d and 405e of Order 1050.1E contained very detailed information on the Alternatives and Affected Environment sections of an EA, and the corresponding EIS paragraphs had cross-references back to the EA discussion. In Paragraph 6–2 of Order 1050.1F, the descriptions of the Alternatives and Affected Environment sections of an EA have been streamlined to reflect that EAs are generally not as detailed as EISs. There are cross-references to the corresponding EIS paragraphs of the Order for EAs that may need to be more substantial. The detailed information that was removed from the EA section has been included in the discussion in Chapter 7, Environmental Impact Statements.

One commenter was concerned that too much of the technical guidance that was present in Order 1050.1E has been removed with this update, particularly in reference to EAs, leaving users without sufficient consistent guidance.

Although some of the text regarding EAs in Chapter 4 of Order 1050.1E has been removed, that information is included in Chapter 7 of Order 1050.1F, and cross-references have been included in Chapter 6 to provide more in-depth information that may be useful for particular EAs. The FAA took care to ensure that the information in Paragraphs 405d and 405e of Order 1050.1E was retained.

Paragraph 6–2.1.b. Proposed Action

One commenter recommended that additional language be added to Paragraph 6–2.1.b to state that this paragraph is the FAA's or the applicant's proposed solution to the problem it is attempting to solve to help clarify the distinction between the purpose and the need for the action and the action itself.

The FAA retains the original language proposed in Paragraph 6–2.1.b of the draft Order 1050.1F. However, the FAA has revised Paragraph 6–2.1.c to clarify that the description of purpose and need presents the problem being addressed and describes what the FAA is trying to achieve with the proposed action.

Paragraph 6–2.1.c. Purpose and Need

One commenter requested that the purpose and need discussion further clarify the distinctions between need, purpose, and the proposed action.

Neither NEPA nor the CEQ Regulations separately define or distinguish purpose and need. Paragraph 6–2.1.c of Order 1050.1F, which has been revised for clarity, explains that the purpose and need section of an EA presents the problem being addressed and describes what the FAA is trying to achieve with the proposed action.

Paragraph 6–2.1.d. Alternatives

One commenter stated that additional guidance is needed concerning issues the FAA considers in its screening of alternatives as to what is considered practicable, prudent, and feasible. The commenter appreciates that some of the special purpose laws have specific requirements regarding alternatives, but believes that the FAA should identify in the Order issues important to the agency achieving its missions. In the past, guidance has been helpful in noting that the FAA often considers ''safety, meeting transportation objectives, design, engineering, environment, economics, and any other applicable factors'' when weighing various alternatives. This language has always been important to discussions with other agencies when preparing EAs and EISs.

In addition to their common meanings, the terms ''practicable,'' ''prudent,'' and ''feasible'' have specific meanings as applied to alternatives in the context of particular special purpose laws and requirements (*e.g.,* those pertaining to Section 4(f) and wetlands). These meanings, and related guidance, have been incorporated as appropriate in Order 1050.1F and the 1050.1F Desk Reference. Consistent with the CEQ regulations, the FAA considers all relevant factors, including, as appropriate, ''economic and technical considerations,'' ''agency statutory missions,'' and ''any essential considerations of national policy'' (see 40 CFR 1505.2(b)), in screening and selecting alternatives.

One commenter requested that the FAA define the term ''unresolved conflict'' because it is an important term that limits the range of alternatives in some EAs.

Under Section 102(2)(E) of NEPA, Federal agencies must ''study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.'' However, the term ''unresolved conflict'' is not defined in NEPA or the CEQ Regulations (see 40 CFR 1501.2(c) and 1507.2(d)). FAA Order 5050.4B provides specific examples for airport development projects. However, other examples and interpretations of the term may also be appropriate, depending on the circumstances. Therefore, the FAA has not included a definition of the term in Order 1050.1F.

One commenter wanted the FAA to clarify that a draft EA should indicate the FAA's preferred alternative, if it has been identified at that stage, and emphasize that a final EA must identify the FAA's preferred alternative.

The FAA does not require that the preferred alternative be identified in a draft or final EA, nor is this required by NEPA or the CEQ regulations. The language in Paragraph 6–2.1(d) states that ''[t]he preferred alternative, if one has been identified, should be indicated.'' This is contrasted with the requirement in 40 CFR 1502.14 of the CEQ Regulations that the preferred alternative must be identified in a final EIS, which is also stated in Paragraph 7–1.2.g.

Paragraph 6–2.1.e. Affected Environment

One commenter asked why the contents from Paragraph 405e of 1050.1E were moved to Paragraph 7–1.1.f in Order 1050.1F, dealing with the affected environment section for EISs.

In Paragraph 6–2 of Order 1050.1F, the descriptions of the alternatives and affected environment sections of an EA have been streamlined to reflect that EAs are generally not as detailed as EISs. There are cross-references to the corresponding EIS sections for EAs that may need to be more substantial.

One commenter asked for clarity that the affected environment section of an EA does not need to contain all the

environmental impact categories listed in Paragraph 4–1.

Paragraph 6–2.1.e states that the affected environment section ''succinctly'' describes the existing environmental conditions of the potentially affected area and should be ''no longer than is necessary to understand the impacts of the alternatives.'' There is no requirement to include a detailed discussion for each environmental impact category. In addition, the affected environment section of an EA is not required to mirror the environmental impact categories listed in Paragraph 4–1, although this may make sense in some circumstances. When an environmental impact category is not relevant to the proposed action or any of the alternatives carried forward for environmental analysis (*i.e.,* the resources included in the category are not present or the category is not otherwise applicable to the proposed action and alternatives), the reason why should be briefly noted and no further analysis is required (see Paragraph 4–2.c). The criteria in Paragraph 6–2.1.e should guide NEPA practitioners in preparing EAs for FAA actions.

One commenter recommended that Paragraph 6–2.1.e note that the CEQ regulations do not require affected environment sections in EAs. The commenter also recommended that the Affected Environment section be described as optional for EAs.

Although not expressly required by the CEQ Regulations, the FAA routinely includes an affected environment section in EAs. A statement has been added to the Order to clarify that the affected environment discussion may be combined with the environmental consequences section in an EA.

Paragraph 6–2.1.f. Environmental Consequences

One commenter stated that the draft Order appears to use the terms ''adverse effects,'' ''environmental consequences,'' and ''impacts'' interchangeably. Definitions of these terms as they are used in the FAA NEPA process would be helpful.

As noted in 40 CFR 1508.8 of the CEQ Regulations, ''effects'' and ''impacts'' as used in the Regulations are synonymous. In light of this fact, we have updated our NEPA procedures to reference ''impacts'' rather than ''effects'' to avoid any confusion. The only time that ''effects'' has been retained in Order 1050.1F is when it is a direct quote or title. The Order has also been revised to only use the term ''environmental consequences'' when referring to the environmental consequences section in an EA or EIS.

One commenter requested that the FAA provide guidance on the criteria used in NEPA documentation to consider impacts for existing and future years.

The determination of appropriate timeframes for consideration of impacts for existing and future years in NEPA documentation is dependent on the proposed action and its potential impacts and is determined on a case-by-case basis.

One commenter stated that the phrase ''Upon review of the final EA . . . the responsible FAA official determines whether any environmental impacts analyzed in the EA are significant'' raises concerns. Typically, draft and final EAs declare if the effects are significant. Does this sentence mean that draft and final EAs should not declare effects to be significant and reserve this determination for FAA's FONSI or FONSI/ROD?

Draft and final EAs disclose the level of effects from the proposed action and typically state whether there are significant impacts for each potential impact. However, the FAA documents its final determination that the proposed action does not have significant impacts in a FONSI or FONSI/ROD.

One commenter recommended that the FAA clarify that cumulative analysis is based on the proposed action, as opposed to other reasonable alternatives. The Order should provide instructions on what one should do regarding a cumulative analysis for a final EA that identifies a preferred alternative that differs from the proposed action.

The commenter is incorrect that the cumulative analysis should only be based on the preferred alternative. Cumulative impacts should be examined for the proposed action and any other alternative considered in detail in the EA. The Order has been revised to remove language that could have inferred that consideration of cumulative impacts is only required for the proposed action.

Paragraph 6–2.2. Environmental Assessment Process

Paragraph 6–2.2.g. Public Comments on a Draft EA

One commenter noted language in the Order that circulation of a draft EA and public meetings are not required for an EA and expressed concern that this language eliminates the need for public consideration and involvement in EAs. In addition, the commenter expressed concern about the application of these provisions to ongoing actions.

The language the commenter is referring to has been removed from Order 1050.1F. Consistent with the CEQ Regulations (see 40 CFR 1501.4(b)), Paragraph 6–2.2.b of the Order states that the FAA or applicant must ''involve the public, to the extent practicable, in preparing EAs.'' What is practicable depends on the circumstances of a particular EA and is determined on a case-by-case basis.

This Order does not reduce the level of public involvement required for EAs. The public involvement requirements in Order 1050.1E have been retained in Order 1050.1F. Thus, publication of this Order will not affect public involvement for ongoing actions.

One commenter stated that it would be helpful to provide examples under which public circulation of a draft EA should be considered. The commenter suggested that an EA prepared for a project that is highly controversial on environmental grounds should undergo public review, as failing to provide this review can lead to unnecessary delay in NEPA processing and FAA decision making.

The FAA has added the following language in Paragraph 6–2.2.g of Order 1050.1F: ''Examples of situations where this [circulation of a draft EA for public comment] may be appropriate include draft EAs prepared for projects involving special purpose laws and requirements that necessitate public input (*e.g.,* Section 106 of the National Historic Preservation Act; Executive Order 11988, Floodplain Management; Executive Order 11990, Protection of Wetlands, etc.) or projects that are highly controversial on environmental grounds.''

Paragraph 6–2.2.i. Use of Errata Sheets

One commenter encouraged the FAA to include use of errata sheets for EAs similar to the provision in the EIS Chapter.

The FAA has added a similar provision for the use of errata sheets in the EA process (see Paragraph 6–2.2.i).

Chapter 7. Environmental Impact Statements and Records of Decision

Paragraph 7–1. Preparation of Environmental Impact Statements

One commenter suggested that the introduction to Chapter 7 inform readers that only the FAA, or a contractor it selects, may prepare EISs for FAA actions per the CEQ Regulations.

Chapter 7 of the Order guides the responsible FAA official through the EIS process. The FAA agrees that the Order should make the point suggested by the

commenter, but believes a better location to do so is Paragraph 2–2, which explains the roles and responsibilities of the FAA, applicants, and contractors. Language has been added to Paragraph 2–2.1.d that states when an EIS needs to be prepared, the FAA or a contractor it selects must prepare the EIS. In addition, Paragraph 2–2.2 notes that applicants may prepare EAs but not EISs, and Paragraph 2–2.3 details the responsibilities of contractors in preparing EISs.

Paragraph 7–1.1. Environmental Impact Statement Format

Paragraph 7–1.1.b. Executive Summary

One commenter suggested adding clarifying language regarding identifying in the executive summary of an EIS the FAA's preferred alternative and noting whether that alternative differs from the applicant's proposed action.

Paragraph 7–1.1.b of the Order states that the executive summary identifies the FAA's preferred alternative. The FAA has added language to Paragraph 7–1.1.b stating that the executive summary also identifies the sponsor's preferred alternative if it differs from the FAA's preferred alternative.

Paragraph 7–1.1.d. Purpose and Need

One commenter stated that the definition of ''purpose and need'' should be the same in Chapters 6 and 7.

The FAA agrees and has amended the descriptions for purpose and need in both the EA and EIS chapters to ensure they are consistent with one another.

Paragraph 7–1.1.h. Mitigation

One commenter expressed concern that Paragraph 7–1.1.h(1) of the proposed Order, which required discussion of mitigation in an EIS for the proposed action only, would mean that all reasonable alternatives would not be given equal consideration. If mitigation is used to reduce the adverse impacts of the proposed action or preferred alternative, it is possible that mitigation could have been applied to other reasonable alternatives, thus reducing the adverse impacts of those alternatives. Treating all reasonable alternatives in a similar manner would allow the decision maker and public to consider each alternative's effects, with and without mitigation, on an equal footing.

The FAA has revised Paragraph 7–1.1.h(1) to clarify that an EIS must discuss mitigation measures for the proposed action as well as any reasonable alternatives. In addition, FAA has clarified throughout the order that mitigation should be considered for the proposed action and any reasonable alternative.

Paragraph 7–1.2. Environmental Impact Statement Process

Paragraph 7–1.2.d(3) Review of Draft EIS

One commenter suggested that Paragraph 7–1.2.d(3) include a reference to FAA Order 1210.20 because it describes the specific government-to-government procedures for the FAA.

In Paragraph 7–1.2.d(3)(c) of the Order, the FAA has added a cross-reference to Paragraph 2–4.4, which outlines the requirements, including FAA Order 1210.20, for government-to-government coordination with tribes.

Paragraph 7–2.2. Record of Decision Content

One commenter requested clarification regarding identification in the ROD of the preferred alternative identified in the final EIS. Providing this information would allow the public to know if modifications have been made to the preferred alternative disclosed in the final EIS.

Paragraph 7–2.2.b states that the ROD must identify all alternatives considered by the FAA. This includes the alternative identified as the preferred alternative in the final EIS. Additionally, Paragraph 7–2.2.a requires that the ROD present the FAA's decision on the proposed action and discuss all factors the agency balanced in making its decision. Thus, the ROD should provide sufficient information to allow the public to know how, if at all, the selected alternative differs from the preferred alternative identified in the final EIS. As a result, no further clarification is necessary.

Chapter 8. Federal Aviation Administration Actions Subject to Special Procedures

Paragraph 8–2. Adoption of Other Federal Agencies' National Environmental Policy Act Documents

One commenter encouraged the FAA to be clear if adoption only applies to Federal agencies' documents or whether an agency can adopt a state NEPA document.

Adoption only applies to Federal agencies' NEPA documents. The word ''Federal'' has been added to Paragraph 8–2 for clarity.

Paragraph 8–5. Actions Within the United States With Potential Transboundary Impacts

One commenter stated the text in Paragraph 8–5 should clarify that it is not intended to add requirements with respect to identification and/or analysis of climate impacts and refer the reader to FAA Order 1050.1E Guidance Memo #3, ''Considering Greenhouse Gases and Climate Under the National Environmental Policy Act (NEPA): Interim Guidance.''

Paragraph 8–5 does not add any new requirements regarding climate impacts or any other aspect of NEPA compliance. It merely reiterates longstanding CEQ guidance that NEPA reviews should include analysis of reasonably foreseeable transboundary effects of proposed actions. The FAA's policies and procedures for analyzing climate impacts are described in Exhibit 4–1 of the Order and in the 1050.1F Desk Reference, which supersede FAA Order 1050.1E Guidance Memo #3, *Considering Greenhouse Gases and Climate Under the National Environmental Policy Act (NEPA): Interim Guidance.*

Chapter 9. Time Limits, Written Re-Evaluations, and Supplemental National Environmental Policy Act Documents

Paragraph 9–1. Time Limits

One commenter asked whether a written re-evaluation of an EA or EIS is needed for a multi-stage project that the FAA has already approved. The commenter suggested specific language for Paragraph 9–1.d(2) stating that a written re-evaluation is required if a later stage of an already-approved project would begin more than three years after the FAA approved the final EIS for the project.

FAA has changed the language in Paragraph 9–1.b(2) and 9–1.d(2)to make clear that if an action is implemented in stages by the FAA or an action implemented by an applicant requires successive FAA approvals, a written re-evaluation is needed at each major stage or approval point that occurs more than three years after the FONSI or final EIS. If the FAA has already approved the action and there are no additional federal approvals, a written re-evaluation does not need to be prepared for an action implemented by an applicant.

Chapter 11. Administrative Information

Paragraph 11–5. Definitions

One commenter recommended providing a definition for the term ''largely undisturbed ground.''

The FAA changed references to ''largely undisturbed ground'' to ''undeveloped land'' to help improve clarity.

One commenter recommended providing a definition for the term ''substantial.''

The general definition of substantial is large in amount, size, or number. The term as used in Order 1050.1F is no different than the common use of the term and therefore the FAA has not added it to the list of definitions. The FAA does understand that the use of the word substantial is subjective and does require an amount of interpretation and should be evaluated on a case-by-case basis using professional judgment.

One commenter recommended providing a definition for the term ''reasonably foreseeable.''

The term ''reasonably foreseeable'' is a term used in the CEQ Regulations and is used in the same manner in Order 1050.1F. This term is not defined in the CEQ Regulations and is interpreted on a case-by-case basis based on the facts and circumstances surrounding the proposed action and the geographic and temporal boundaries established for a project's cumulative impacts analysis. For airport actions, FAA Order 5050.4B provides additional guidance to aid airport sponsors and NEPA practitioners in determining what future actions should be considered reasonably foreseeable.

One commenter recommended providing a definition for the term ''highly controversial.'' While the commenter acknowledged this term is defined in Paragraph 5–2.b(10), the commenter believed that this is often a highly searched for term and would benefit from being located in Chapter 11 as well.

The term ''highly controversial'' has not been added to the list of definitions since highly controversial is used in a variety of ways throughout the Order. For instance, highly controversial EISs require extra steps to coordinate through DOT. However, where the term specifically means highly controversial on environmental grounds, ''on environmental grounds'' has been added for clarity.

One commenter recommended providing a definition for the term ''NEPA-like State law''

The term ''NEPA-like State law'' is not used anywhere in Order 1050.1F and as such does not need to be defined in the Order.

One commenter recommended providing a definition for the term ''major runway extension'' as used in Paragraph 3–1.3.b(c).

The FAA has not added a new term to the definitions for ''major runway extension'' in this Order. This term is a specific term used by the Office of Airports and is more appropriately defined in Order 5050.4. Paragraph 9.1l of 5050.4B defines major runway extension as ''a runway extension that causes a significant adverse environmental impact to any affected environmental resource (*e.g.,* wetland, floodplain, historic property, etc.). This includes, but is not limited to, causing noise sensitive areas in the Day-Night Average Sound Level (DNL) 65 decibel (dB) contour to experience at least a DNL 1.5 dB noise increase when compared to the no action alternative for the same time frame.''

One commenter recommended providing a definition for the term ''significance threshold'' or ''significant impact threshold.''

The use of the term significance threshold is limited to Chapter 4, Impact Categories, Significance, and Mitigation and is discussed in detail within this chapter. Because the discussion within Chapter 4 is adequate to define the term significance threshold, the FAA has decided not to add it to the list of definitions. Any reference to significant impact threshold has been changed to significance threshold to avoid any confusion.

One commenter recommended providing a definition for the term ''DNL.''

A footnote has been provided in Exhibit 4–1 for the definition for DNL. Since DNL is a term used to denote the level of noise impacts, it seemed more appropriate to define the term with the level of significance rather than add the term to the definitions for the overall Order.

One commenter stated that the definition of ''environmental studies'' should include reference to ''special studies,'' a term used by many airports for efforts designed to address special project-specific issues and may not be limited to a specific environmental category, but provide greater understanding of a facet of the proposed action/project and include studies noted in Paragraph 2–7.b(3).

''Environmental studies'' is only used in Paragraph 8–5 *Effects of Major Federal Aviation Administration Actions Abroad* and Paragraph 7–1.1.i the list of preparers in an EIS. As defined in Order 1050.1F, environmental studies are the investigation of potential environmental impacts. This definition is appropriate to convey the meaning that was intended within the context of this Order. Thus expanding this definition as written to include reference to ''special studies'' as suggested by the commenter is not needed. Studies referenced in Paragraph 2–7.b(3) are not limited to environmental studies as defined in this Order.

One commenter suggested the definition of noise sensitive area should inform the reader that noise attenuation is needed for the residential structures on agricultural land.

The current definition of noise sensitive area states ''[i]ndividual, isolated, residential structures may be considered compatible within the DNL 65 dB noise contour where the primary use of the land is agricultural and adequate noise attenuation is provided.'' Thus, individual, isolated, residential structures would not be compatible unless adequate noise attenuation is provided to those structures. The FAA did not revise the definition of noise sensitive area because the current definition already requires residential structures to be noise-attenuated in order to be considered compatible.

One commenter recommended the addition of waterfowl refuges in the list of areas that may be sensitive to noise as those areas also meet the definition of the DOT Act's Section 4(f) lands.

The FAA has added waterfowl refuges throughout the Order when there is reference to Section 4(f) lands.

Appendix B. Federal Aviation Administration Requirements for Assessing Impacts Related to Noise and Noise-Compatible Land Use and Section 4(F) of the Department of Transportation Act (49 U.S.C. 303).

Two commenters asked why the FAA included Appendix B. Either the appendix should be inserted into the 1050.1F Desk Reference or the 1050.1F Desk Reference should be inserted into Order 1050.1F and a revised draft Order should be re-issued. One of the commenters stated that Appendix B does not include all FAA-specific requirements and there is a potential for conflict between Appendix B and the 1050.1F Desk Reference.

As explained previously, the FAA updated the material in Appendix A of Order 1050.1E and moved the updated material to the 1050.1F Desk Reference. The 1050.1F Desk Reference includes a combination of FAA-specific requirements, requirements under non-FAA authorities, and FAA guidance. Having a separate 1050.1F Desk Reference will allow the FAA to easily make any necessary updates to the FAA guidance and the descriptions of non-FAA requirements without having to go through the relatively lengthy and resource-intensive effort of revising Order 1050.1F.

Some of the FAA-specific requirements described in the 1050.1F Desk Reference are stated in the body of

Order 1050.1F. The purpose of Appendix B of the Order is to state in the Order the remaining FAA-specific requirements that are described in the 1050.1F Desk Reference. Appendix B also describes related requirements to provide appropriate context.

The FAA carefully reviewed the material presented in the 1050.1F Desk Reference to ensure that all FAA-specific environmental review requirements are included in Appendix B.

The FAA will not make changes to the 1050.1F Desk Reference that conflict with Appendix B of Order 1050.1F. Any new FAA-specific environmental review requirements would be added to both Appendix B and the 1050.1F Desk Reference.

Paragraph B–1. Noise and Noise-Compatible Land Use

Two commenters questioned whether Appendix B addresses all noise and noise-compatible land use impacts for Section 106 resources.

Appendix B focuses on the FAA-specific requirements for noise and Section 4(f) analysis. In addition to describing those requirements, the 1050.1F Desk Reference also includes extensive information and guidance for NEPA practitioners, contractors, and applicants regarding special purpose laws, including Section 106 of the NHPA. Chapter 11 of the 1050.1F Desk Reference provides guidance on noise evaluation for historical, architectural, archeological, and cultural resources.

Several commenters questioned the FAA's use of DNL as the noise measurement metric, where the Clean Air Act rules use a peak month impact instead of an annual average number.

DNL is the standard Federal metric for determining cumulative exposure of individuals to noise. In 1981, the FAA formally adopted DNL as its primary metric to evaluate cumulative noise effects on people due to aviation activities. Research by the Federal Interagency Committee on Noise (FICON) verified that the DNL metric provides an excellent correlation between the noise level an aircraft generates and the level of community annoyance resulting from that noise level.

One commenter questioned whether DNL is appropriate for RNAV/RNP procedures given their effect of focusing noise on the ground.

The FAA applies the same significance criteria to all FAA actions and it is appropriate to use the same criteria for RNAV/RNP procedures. The NEPA documentation for RNAV/RNP procedures should disclose how the noise impacts of the proposed action have changed from the no action alternative, including changes in the concentration of noise.

Two commenters recommended reporting to a tenth of a dB when reporting DNL. The Aviation Environmental Design Tool (AEDT), like its predecessors Integrated Noise Model (INM) and Noise Integrated Routing System (NIRS), computes the calculation of DNL values to several decimal places and uses these unrounded values when calculating changes in DNL values between two scenarios (*e.g.,* an action alternative and the no-action alternative in an EA or EIS). The FAA does not have a specific policy regarding rounding of DNL values. INM and NIRS both report DNL values to the tenth of a decimal, which has been reflected in FAA NEPA documents. The current model, AEDT 2b, has the ability to display noise values beyond the tenth of decimal and the FAA is reviewing whether to provide additional guidance and/or criteria, as appropriate, to guide DNL reporting in the future.

One commenter asked for clarification on whether Community Noise Equivalent Level (CNEL) is to be used in the FAA's NEPA documents in lieu of DNL or as a supplemental metric, and how. For example, will the FAA use CNEL to determine significant impacts?

The FAA has revised Paragraph B–1 to clarify that CNEL may be used in lieu of DNL for noise analysis of FAA actions in California. DNL is required to be used in all other locations.

Paragraph B–1.3. Affected Environment

One commenter recommended that Paragraph B–1.3 of Appendix B of the Order, describing the affected environment for the Noise and Noise-Compatible Land Use impact category, should have separate sections for airport actions and air traffic procedure actions.

The FAA does not agree with the commenter's recommendation. The existing language in Paragraph B–1.3 of Appendix B adequately addresses both airport and air traffic procedure actions at a level of detail appropriate for the Order. The language also refers to the 1050.1F Desk Reference for more information regarding differences in noise analysis for airport and air traffic procedure actions.

One commenter stated that in light of the requirement to analyze noise changes between the 60 and 65 DNL contours when there is a 1.5 dB DNL increase within the 65 DNL contour, the study area should include an area that captures areas exposed to DNL 60 dB and higher.

The FAA disagrees with the commenter that a specific DNL level should be used to define the study area for all actions. Paragraph B–1.4 of Order 1050.1F states the study area must include the area within the DNL 65 dB contour and may be larger. The study area must be at least as large as the DNL 65 dB contour to be able to determine the potential for significant impacts with respect to noise, but may be larger depending on the action and the potential impacts.

Referring to text in Paragraph B–1.3 of Appendix B of the Order, one commenter recommended that the FAA specify the difference between analysis conducted to meet the requirements of Section 4(f) and analysis conducted pursuant to the FAA policy directive regarding evaluation of noise effects on national parks and wildlife refuges in areas where aircraft operate between the 10,000 feet above ground level (AGL) and 18,000 feet AGL. The commenter stated that while the kind of resources and effects evaluated are the same, they do not believe that these analyses are based on the same directives. The commenter stated that the text should clarify that the primary ATO action study area is up to 10,000 feet AGL for departures, and 7,000 feet AGL for arrivals. Finally, the commenter recommended that noise analyses conducted for areas between 10,000 feet AGL and 18,000 feet AGL be described as supplemental.

The text referenced by the commenter states that the study area for the noise analysis of a proposed change in air traffic procedures or airspace redesign may extend vertically from the ground up to 10,000 feet AGL, or up to 18,000 feet AGL if the proposed action or alternative(s) is over a national park or wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

Because national parks and wildlife refuges are Section 4(f) properties, they are subject to the policies and procedures in Exhibit 4–1 and Appendix B of Order 1050.1F (carried forward from Order 1050.1E) relating to analysis of noise impacts on such properties. Under those policies and procedures, the FAA may rely on the land use compatibility guidelines in 14 CFR part 150 to determine whether there is a constructive use where the land uses specified in the guidelines are relevant to the value, significance, and enjoyment of the Section 4(f) lands in question. Special consideration needs to be given to noise sensitive areas within Section 4(f) properties (including, but

not limited to, noise sensitive areas within national parks, national wildlife and waterfowl refuges and historic sites, including traditional cultural properties) where the land use compatibility guidelines in 14 CFR part 150 are not relevant to the value, significance, and enjoyment of the area in question. For example, the part 150 land use categories are not sufficient to determine the noise compatibility of areas within a national park or wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute. Although the text in Paragraph B–1.3 regarding extending the study area up to 18,000 feet AGL over national parks and wildlife refuges is based on a different FAA order (Order JO 7400.2K), it is consistent with the policies and procedures for Section 4(f) properties carried forward from FAA Order 1050.1E.

The FAA does not adopt the commenter's suggestion to distinguish between 7,000 feet AGL for arrivals and 10,000 feet AGL for departures in describing the study area for noise analysis of proposed changes in air traffic procedures or airspace redesign. Such a distinction is unnecessary because both altitudes are already encompassed in the text of Paragraph B–1.3, which explains that the study area may extend up to 10,000 feet AGL.

Nor does the FAA adopt the commenter's recommendation to describe noise analyses conducted for areas between 10,000 feet AGL and 18,000 feet AGL as supplemental. The use of supplemental noise analysis is adequately explained in Paragraph B–1.6, including for noise sensitive areas within national parks and wildlife refuges where a quiet setting is a generally recognized purpose and attribute.

One commenter recommended changing the term ''airspace redesign'' to ''air traffic procedure redesign'' throughout Order 1050.1F because airspace is comprised of sectors, and changes to sectors are considered administrative.

Order 1050.1F only uses the term ''airspace redesign'' in Paragraph B–1.3 when discussing the study area for noise impacts. It is the proper term in this context as it is describing the possible extent of air traffic changes (*i.e.,* from a single procedure to a redesign of multiple procedures in the airspace). Therefore, the FAA has not made the recommended change.

One commenter expressed concern that the requirement in Paragraph B–1.3 to disclose local noise and land use compatibility standards that differ from the FAA's land use compatibility guidelines in 14 CFR part 150 would be very lengthy and costly when the proposed action is a large-scale air traffic action that could include hundreds of different local jurisdictions. The commenter recommended adding ''to the extent practicable'' as a qualifier to the requirement.

The commenter's recommended qualifier is inconsistent with the disclosure requirements in sections 1502.16(c) and 1506.2(d) of the CEQ regulations, which do not contain any ''practicability'' exception. Section 1502.16(c) requires that the environmental consequence section of EISs include discussion of ''[p]ossible conflicts between the proposed action and the objectives of federal, regional, state, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.'' Section 1506.2(d) requires that EISs discuss any ''inconsistency of a proposed action with any approved state or local plan and laws (whether or not federally sanctioned).'' The requirement cited by the commenter was carried over from Section 4.2a in Appendix A of FAA Order 1050.1E.

The FAA has clarified the requirement in Paragraph B–1.3 in Appendix B of Order 1050.1F to require disclosure of local noise and land use compatibility standards to the extent required under the above-cited provisions of the CEQ regulations. To minimize time and expense, the existence of any relevant local standards can be determined by specifically soliciting this information during scoping.

One commenter stated that the requirement in the first bullet of Paragraph B–1.3 of Appendix B to include DNL contours or noise grid points showing existing aircraft noise levels in the description of current noise conditions should also indicate the use of population centroids from U.S. Census Blocks.

The text in this bullet has been revised to clarify that the population centroids are from U.S. Census Blocks.

One commenter expressed concern about the requirement in Paragraph B–1.3 to include in the description of current noise conditions the location and number of noise sensitive uses in addition to residences (e.g., schools, hospitals, parks, recreation areas) within the area to be analyzed for noise. The commenter stated that for large-scale FAA air traffic procedure actions compliance with this requirement would be of limited practical utility and would be lengthy, costly, and result in significantly longer documents.

The FAA has made changes to the Order to clarify that the description of current noise conditions includes location and number of noise sensitive uses in addition to residences (*e.g.,* schools, hospitals, parks, recreation areas) that could be significantly impacted by noise, rather than all such uses within the area to be analyzed for noise (see Paragraph B–1.5 for significance determination criteria).

It is important to note that this is not a change from Order 1050.1E since the location and number of noise sensitive uses (*e.g.,* schools, churches, hospitals, parks, recreation areas) exposed to DNL 65 dB or greater should be disclosed in the EIS for each modeling scenario (see paragraph 14.4i(2) of Order 1050.1E).

One commenter was concerned with the statement in the fourth bullet in Paragraph B–1.3 of Appendix B that ''the addition of flight tracks is helpful.'' The commenter recommended adding the qualifier ''but not required'' or ''if appropriate.''

In response to the comment, the FAA has reworded the statement to clarify that the addition of flight tracks ''may be helpful.'' It is up to the FAA's discretion whether flight tracks should be included.

Two commenters recommended that a statement be added to Paragraph B–1.3 of Appendix B that, if appropriate, the U.S. Census data may be supplemented and sub-divided into additional, smaller grid points (based on local land use data, aerial photography, etc.) to provide a more reasonable geographic representation of the location of residences.

Guidance on supplementation of U.S. Census data is provided in the 1050.1F Desk Reference.

Paragraph B–1.4. Environmental Consequences

Two commenters questioned what the term ''same future timeframe'' means since it is not defined in Appendix B. The commenters recommended adding the following language from Order 1050.1E: ''[t]imeframes usually selected are the year of anticipated project implementation and 5 to 10 years after implementation. Additional timeframes may be desirable for particular projects.''

The timeframe selected by the FAA for reporting future noise impacts is dependent on the type of action being studied and the potential impacts. The requirement in Order 1050.1F simply requires that the same timeframe must be used for the no-action alternative, the proposed action, and other analyzed alternatives. The commenter's

recommended language is included in the 1050.1F Desk Reference.

Two commenters asked the FAA to clarify the terminology ''within the DNL 60–65 dB contours'' as used in the third bullet in Paragraph B–1.4. According to the commenters, this terminology is vague if a point analysis is being done and is not as clear as similar language in Paragraph B–1.3. The commenters suggest the following language: ''The identification of noise sensitive areas where noise is projected to increase by DNL 3.0 dB or more at or above DNL 60.0 to less than 65.0 dB.''

For increased clarity, the FAA has revised the referenced bullet to read: ''The identification of noise sensitive areas within the DNL 60 dB contour that are exposed to aircraft noise at or above DNL 60 dB but below DNL 65 dB and are projected to experience a noise increase of DNL 3 dB or more.''

Two commenters questioned the rationale of making the analysis of increases of DNL 3 dB or more within the DNL 60–65 dB contours conditional upon DNL 1.5 dB increases within the DNL 65 dB contour.

The rationale for requiring analysis of noise increases of DNL 3 dB or more within the DNL 60–65 dB contours only when DNL 1.5 dB increases are documented within the DNL 65 dB contour comes from the August 1992 report of the Federal Interagency Committee on Noise titled *Federal Agency Review of Selected Airport Noise Analysis Issues.* Although this is current FAA policy, it does not preclude additional analysis outside the DNL 65 dB contour.

One commenter recommended the Order define ''receptor sets.''

The FAA has added an explanatory footnote to Appendix B that states: ''Receptors are locations where noise is modeled. A collection of receptors is known as a receptor set. Grid points are an example of a receptor set.''

One commenter recommended removing the statement in Paragraph B–1.4 of Appendix B that noise contours ''may be created'' for air traffic actions because this would be a change in FAA policy.

Creating contours for air traffic actions has always been an option. The referenced text states that noise contours may be created; however, noise contours are not required and are not normally used in the analysis of larger scale air traffic airspace and procedure actions. The FAA has added ''at the FAA's discretion'' to specify that whether or not noise contours are mapped would be decided by the FAA.

One commenter recommended that the FAA explain the meaning of each of the three levels of noise change listed for air traffic airspace and procedure actions.

The FAA has added a footnote in Paragraph B–1.4 explaining that the criteria listed for changes in noise exposure levels below DNL 65 dB are not defined as significant (see Exhibit 4–1 of the Order), but are referred to by the FAA as ''reportable'' noise changes.

One commenter expressed concern about the requirement in Paragraph B–1.4 that for air traffic airspace and procedure actions the analysis must include ''change-of-exposure tables and maps at population centers and noise sensitive areas (e.g., residences, schools, churches, hospitals, parks and recreation areas)'' to identify noise sensitive areas where noise will change by ±1.5 dB for DNL 65 dB and higher, ±3 dB for DNL 60 dB to <65 dB, and ±5 dB for DNL 45 dB to <60 dB. Specifically, the commenter recommended deleting the ''e.g.'' statement. The commenter stated that noise sensitive areas are defined based on DNL 65 dB or higher, and for air traffic procedure redesign EAs data would have to be collected on all properties within very large study areas and very large grids analyzed to determine which properties are noise sensitive. The commenter expressed concern that this would represent an extensive noise analysis for an air traffic procedure redesign EA. For air traffic studies, population centroids are used to represent ''residences.'' The current typical approach has been to rely on the centroid results. If the results indicated a DNL 1.5 or higher increase, further analysis in the area to identify noise sensitive uses would be conducted.

The language in B–1.4 for air traffic airspace and procedure actions has been modified to state that change-of-exposure tables and maps at population centers are provided to identify where noise will change by the designated amounts. The modification from Appendix A of Order 1050.1E was unintentional. The requirement to disclose the location and number of noise sensitive uses exposed to DNL 65 dB or greater is retained.

Paragraph B–1.5. Significance Determination

One commenter stated that Paragraph 14.4b of Order 1050.1E incorporates the regulations in 14 CFR part 150, but Order 1050.1F fails to include this necessary incorporation.

The FAA has added the appropriate text to Paragraph B–1.5 of Order 1050.1F.

Two commenters noted that Paragraph B–1.5 of Appendix B references ''Exhibit 11–3'' but that exhibit was not provided for review.

The reference to Exhibit 11–3 was made in error and has been replaced with the correct reference, which is Table 1 of Appendix A of 14 CFR part 150.

One commenter stated that the FAA should lower the significance threshold for noise since current research on the health impact of noise does not support DNL 65 dB. Another commenter requested that the significance threshold be lowered to 55 dB since health impacts are generated at 55 dB and higher.

The designation of DNL 65 dB as a significant level of noise is based on statistical surveys of community annoyance. Annoyance is a summary measure of the general adverse reaction of people to transportation noise that causes interference with speech, sleep, the desire for a tranquil environment, and the ability to use the telephone, radio, or television satisfactorily.

The FAA is conducting a new nationwide survey to update the scientific evidence on the relationship between aircraft noise exposure and its annoyance effects on communities around airports. Research to date on the health impacts of noise does not justify revision of the FAA's significance threshold. The FAA is conducting further research on aviation noise and health impacts. The FAA will issue future policy updates if warranted by research results. There is currently an insufficient scientific foundation for changing the significance threshold for noise.

One commenter urged the FAA to reconsider and verify whether the longstanding significance threshold for noise and noise-compatible land use remains valid for the new concentrated and frequent flight patterns association with PBN.

As a part of its ongoing effort to understand the impact of aviation noise on airport communities, the FAA is conducting a new nationwide survey to update the scientific evidence on the relationship between aircraft noise exposure and its annoyance effects on communities around airports.

The FAA applies the same significance criteria to all FAA actions and it is appropriate to use the same criteria for RNAV/RNP procedures. The NEPA documentation for RNAV/RNP procedures should disclose how the noise impacts of the proposed action have changed from the no action alternative, including changes in the concentration of noise.

One commenter stated that the FAA must reconsider whether the current use

of INM and AEDT in determining significant noise impacts has scientific integrity as required for NEPA documentation. According to the commenter, with the high level of uncertainty and lack of established scientific integrity in the methodology it appears that the level of significance in the draft Order for noise increases of 1.5 dB (Exhibit 4–1) is not able to be accurately provided.

The Integrated Noise Model (INM) and the Aviation Environmental Design Tool (AEDT) are the best available models for civil aviation noise. They are well validated and use internationally recognized methodologies. Some uncertainty is inherent in noise modeling, but INM and AEDT provide a sufficient level of accuracy for the FAA to make significance determinations with respect to noise impacts. The FAA expends considerable effort and resources to improve and verify the accuracy of its noise models. See, for example, the FAA's uncertainty quantification report for AEDT Version 2a, which can be found at *https://aedt.faa.gov/Documents/AEDT%202a%20Uncertainty%20Quantification%20Report.pdf.*

One commenter was concerned with the following sentence relating to analysis of noise impacts to wildlife: ''[W]hen 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.'' The commenter stated that noise impacts to a species can be predicted even if they have not been studied for that species. This is the essence of biological inference. Accordingly, the guidance should be revised to indicate that established scientific practices should be used to obtain the best estimate of potential effects and an assessment of the estimate's uncertainty.

FAA has revised the referenced sentence in the Order to read ''When instances arise in which aircraft noise is a concern with respect to wildlife impacts, established scientific practices, including review of available studies dealing with specific species of concern, should be used in the analysis. In addition, the Biological Resources chapter of the 1050.1F Desk Reference has additional information on how to evaluate impacts to wildlife.

Two commenters stated that the FAA should explicitly describe how the agency makes a significance determination for properties that have already received or been offered and refused noise mitigation through prior efforts. The Order should specify if and how previously mitigated versus not previously mitigated properties should be documented. The Order should also indicate if previously mitigated properties that meet the threshold for significance will be eligible for further mitigation.

It is important to distinguish between land use compatibility and the determination of significance for noise impacts. The FAA defines a significant noise impact as an increase of DNL 1.5 dB or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dB noise exposure level, or that will be exposed at or above the DNL 65 dB level due to a DNL 1.5 dB or greater increase, when compared to the no-action alternative for the same timeframe (see Exhibit 4–1 of the Order). This significance threshold applies irrespective of whether exposed properties have previously been sound insulated.

The environmental consequences section should disclose the numbers of homes that are significantly impacted by noise from the proposed action and distinguish which homes have been previously sound insulated and which have not.

The issue of how prior noise mitigation activities affect significance determinations is separate from the issue of whether previously insulated homes that are significantly impacted are eligible for funding for further mitigation by airport sponsors. FAA's criteria of project eligibility for noise mitigation grants are set forth in the Airport Improvement Handbook, Order 5100.38. Homes that were previously mitigated may be eligible for further mitigation if they are now within the DNL 70 dB contour where land acquisition would be a viable option.

One commenter requested clarification as to whether the FAA has a significance threshold for noise impacts in a quiet setting. The commenter stated that Exhibit 4–1 of Order 1050.1F seems to leave open for each project that involves quiet setting situations the development of its own threshold of significance.

In describing factors to consider in determining significance of noise impacts, Exhibit 4–1 of the Order states: ''Special consideration needs to be given to the evaluation of the significance of noise impacts on noise sensitive areas within Section 4(f) properties (including, but not limited to, noise sensitive areas within national parks; national wildlife and waterfowl refuges; and historic sites, including traditional cultural properties) where the land use compatibility guidelines in 14 CFR part 150 are not relevant to the value, significance, and enjoyment of the area in question. For example, the DNL 65 dB threshold does not adequately address the impacts of noise on visitors to areas within a national park or national wildlife and waterfowl refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.''

The FAA has not established a specific significance threshold for noise in these settings. Therefore, the agency makes the determination of significance on a case-by-case basis considering context and intensity (see 40 CFR 1508.27).

One commenter recommended that the FAA clarify whether the significance threshold stated in Paragraph B–1.5 applies to compatible land use as well. The commenter stated that the compatible land use is now part of the noise section, but there is no connection between the DNL 1.5 dB increase and land use exposed to DNL 65 dB or higher. The commenter also noted that the paragraph does not mention significance when populations are newly exposed to DNL 65 dB but the increase is less than DNL 1.5 dB.

The significance threshold in Paragraph B–1.5 applies to the entire impact category of Noise and Noise-Compatible Land Use. Thus, for example, an increase of DNL 1.0 dB in a residential setting is not a significant impact even if it newly exposes a residence to a noise exposure level of DNL 65 dB or higher. The FAA has revised Paragraph B–1.4 of the Order to clarify that newly non-compatible land uses must be disclosed regardless of whether there is a significant noise impact.

One commenter suggested adding a statement that the FAA uses its significance threshold, not local standards, to determine if a project would cause a significant noise effect.

The FAA has added language to Paragraph B–1.3 of Appendix B stating that the FAA does not use local standards to determine the significance of noise impacts.

One commenter questioned whether ''national parks'' in Paragraph B–1.5 of Appendix B of the Order pertains only to properties designated as ''national parks'' or to all National Park Service (NPS) properties (there are currently 20 different property designations in use by the NPS, including national parks.) The commenter questioned that if it pertains to all designations, would it also include properties with the same designations managed by other agencies (e.g., the Bureau of Land Management (BLM) manages national monuments, as does the Forest Service).

Similar to language in Appendix A of Order 1050.1E, Paragraph B–1.5 of Appendix B of Order 1050.1F explains that special consideration needs to be given to the evaluation of the significance of noise impacts on certain noise sensitive areas. That language has been modified to clarify that such consideration applies to noise sensitive areas within Section 4(f) properties where the land use compatibility guidelines in 14 CFR part 150 are not relevant to the value, significance, and enjoyment of the area in question (*e.g.,* including, but not limited to noise sensitive areas within national parks; national wildlife and waterfowl refuges; and historic sites, including traditional cultural properties). These areas are not limited by the entity (*e.g.,* the NPS, BLM, the Forest Service, or another agency) who has jurisdiction over the area in question.

Paragraph B–1.7. Noise From Sources Other Than Aircraft Departures and Arrivals

One commenter stated that Paragraph B–1.7, Noise from Sources Other than Aircraft Departures and Arrivals, and Paragraph B–1.11, Facilities and Equipment Noise Emissions, should either be combined as ''Noise from Sources Other than Aircraft Departures and Arrivals'' or Paragraph B–1.7 should be renamed to something like ''Noise from Other Transportation Sources.''

Since the noise analysis is different for facility and equipment noise and other noise sources, the FAA has decided to keep these sections separate. No changes were made to the titles of these sections. However, the FAA has added a reference within Paragraph B–1.7 to indicate that Paragraph B–1.11 contains information on facility and equipment noise emissions.

Two commenters suggested that the FAA add references to methodologies of the Federal Transit Administration and the Federal Railroad Administration when referencing analysis of surface transportation noise impacts.

The FAA has revised language in Paragraph B–1.7 to clarify that analysis of surface transportation impacts should be conducted using acceptable methodologies from the appropriate modal administration. To the extent that the Federal Transit Administration, the Federal Railroad Administration, or another DOT modal administration has developed methodologies for determining noise impacts, these accepted methodologies may be used. We have retained the example of the Federal Highway Administration for highway noise.

Two commenters stated that the Order should clarify how multiple noise sources should be combined and reported, and what criteria should be used in determining significant impacts and compatible land use.

If appropriate, an analysis of surface transportation impacts, including construction noise, should be conducted using accepted methodologies from the appropriate modal administration, such as the Federal Highway Administration for highway noise. As there is no currently approved methodology and model for combining aviation and non-aviation noise sources, AEE will have to provide prior written approval to use a methodology and computer model equivalent to DNL and the Aviation Environmental Design Tool for that purpose. The FAA's established criteria for determining significant noise impacts and compatible land use remain applicable. A significant noise impact would occur if analysis shows that the proposed action or alternative would increase noise by DNL 1.5 dB or more for a noise sensitive area that is exposed to noise at or above the DNL 65 dB noise exposure level, or that would be exposed at or above that level due to a DNL 1.5 dB or greater increase, when compared to the no action alternative for the same timeframe. 14 CFR part 150, Appendix A, Table 1 provides Federal land use compatibility guidelines as a function of DNL values. Land use compatibility is determined by comparing the predicted or measured DNL value at a site to the values listed in Table 1.

Two commenters asked whether Paragraphs B–1.7 and B–1.11 should be subsections under B–1.4 and B–1.5, as these paragraphs encompass noise sources that can change as a result of the proposed action.

Paragraphs B–1.6 through B–1.12 identify unique situations that include supplemental noise analysis, noise from other sources, and noise considerations specific to lines of business with the FAA, that do not apply to all situations. Therefore, the FAA has decided not to incorporate Paragraphs B–1.7 and B–1.11 into the general paragraphs regarding environmental consequences and significance determination for noise.

Paragraph B–2. Section 4(f), 49 U.S.C. 303

One commenter recommended clarification of the language in the draft Order referring to when the Secretary of Transportation may approve a program or project that requires the use of a Section 4(f) property.

The FAA has changed the language in Paragraph B–2 to track the language of Section 4(f), 49 U.S.C. 303. Thus, that paragraph now states that the Secretary of Transportation *may approve* a program or project that requires the use of a Section 4(f) property *only if* there is no feasible and prudent alternative and the project includes planning to minimize harm resulting from the use.

Paragraph B–2.1. Affected Environment

Two commenters stated that the Order should indicate how the inventory of Section 4(f) properties considered should be documented in an EA or EIS. The commenters suggested adding a sentence such as: ''The inventory of Section 4(f) properties considered should be documented by the location and the Federal, state, or local official having jurisdiction over the property.''

As stated in Paragraph B–2.1 of Appendix B, ''[t]he FAA should identify as early as practicable in the planning process Section 4(f) properties that implementation of the proposed action and alternative(s) could affect.'' The appropriate level of detail for identifying such potentially affected Section 4(f) properties is up to the responsible FAA official to determine. Paragraph B–2.2 states that where use of a Section 4(f) property is involved, the description of the affected Section 4(f) property should include the location, size, activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, jurisdictional entity, and other factors necessary to understand and convey the extent of the impacts on the resource.

One commenter recommended noting the criteria used by the National Register of Historic Places for traditional cultural properties to avoid any suggestion that generic or otherwise obtuse definitions apply.

The FAA has added a definition of ''traditional cultural properties'' to Paragraph 11–5(14) of the Order.

Paragraph B–2.2. Environmental Consequences

Two commenters asked for clarification that the requirement to describe the ''location, size, activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, jurisdictional entity, and other factors necessary to understand and convey the extent of the effects on the resource'' applies only to those Section 4(f) resources impacted by the proposed action (i.e., physical use or constructive use is involved).

The FAA has modified the text in Paragraph B–2.2 to provide the requested clarification.

Paragraph B–2.2.2. Constructive Use of Section 4(f) Property

One commenter stated that the text ''[f]indings of adverse effects do not automatically trigger Section 4(f) unless the effects would substantially impair the affected resource's historical integrity'' is inconsistent with 23 CFR 774.15(f)(1).

The FAA does not agree with the commenter that the referenced text regarding findings of adverse effect under Section 106 of the NHPA is inconsistent with 23 CFR 774.15(f)(1). That regulation states that there is no constructive use when there is no historic property affected or no adverse effect to an historic property. It does not necessarily follow that a constructive use occurs whenever there is an adverse effect to an historic property. As stated in 23 CFR 774.15(a), the test for whether a constructive use exists is whether a ''the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired.'' This test was reflected in Order 1050.1E and is carried forward in Order 1050.1F. An adverse effect under Section 106 of the NHPA does not necessarily result in substantial impairment for Section 4(f) purposes.

Paragraph B–2.5. Section 6(f) Requirements

One commenter stated it is unclear, given the title of Appendix B, why it includes discussion of Section 6(f).

Section 6(f) of the Land and Water Conservation Fund Act is often discussed within guidance for Section 4(f) since it may be an integral part of a Section 4(f) analysis when recreational properties are involved. Section 6.2j in Appendix A of Order 1050.1E also discussed replacement of recreational lands funded by the Land and Water Conservation Fund (required under Section 6(f)) within the Section 4(f) discussion.

Appendix C. Web Addresses for Cited Publications

One commenter noted that the FAA should reconsider providing links to Federal Web sites because they quickly become outdated.

The FAA has removed the appendix that provides links to the Federal Web sites. Important links will be contained within the 1050.1F Desk Reference and on the FAA NEPA Web site which can be updated as needed.

II. Helicopters

Several commenters stated their opposition to exempting helicopter routes from environmental review, and several commenters stated that the CATEX for helicopter routes in Paragraph 5–6.5.h of the Order should be deleted or greatly modified based on concerns about helicopter noise.

The FAA's establishment and modification of helicopter routes are subject to environmental review under NEPA. A CATEX is not an exemption from environmental review, but rather one type of environmental review under NEPA (the others are EAs and EISs)(see CEQ's CATEX Guidance). CATEXs are limited to actions that do not, individually or cumulatively, cause significant environmental impacts (40 CFR 1508.4). Even if an action is included within the scope of a CATEX, the FAA must still consider whether one or more extraordinary circumstances exists in which the action could have a significant impact. If such a circumstance exists, the FAA may not apply the CATEX and the action would require further environmental review in an EA or EIS.

The CATEX for establishment of helicopter routes over major thoroughfares has been included in previous versions of FAA Order 1050.1, including in Paragraph 311h of Order 1050.1E. In Paragraph 5–6.5.h of proposed Order 1050.1F, the FAA proposed to modify the CATEX slightly by clarifying that ''establishment'' includes modification of existing helicopter routes. In additional to making that clarification, the final Order also adds language to Paragraph 5–6.5.h limiting the applicability of the CATEX to the establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas (*e.g.,* residential areas). Thus, if the establishment or modification of a helicopter route over a major thoroughfare would result in a significant noise increase in a residential or other noise sensitive area, the CATEX could not be used for that action.

Three commenters asked the FAA to undertake environmental studies of helicopter routes.

NEPA and this Order apply to actions directly undertaken by the FAA and to actions undertaken by a non-Federal entity where the FAA has authority to condition a permit, license or approval. Existing helicopter routes and helicopter activity in general would not be subject to an environmental review under NEPA unless there was a triggering FAA action, such as the modification of an existing route or the establishment of a new route.

In support of deleting CATEX 5–6.5.h, two commenters stated that noise footprints from helicopter routes extend beyond the width of major thoroughfares and affect adjacent residential and other noise sensitive areas. Another commenter stated that people live and work along major thoroughfares and will therefore be adversely affected. Wherever there is a major thoroughfare there are people. Therefore, this condition actually ensures that significant impacts would affect a great number of people as a result of actions in this category. CEQ guidance on establishing, applying, and revising CATEXs states that ''the status and sensitivity of environmental resources vary across the nation; consequently, it may be appropriate to categorically exclude a category of actions in one area or region rather than across the nation as a whole.'' Therefore, the FAA should either restrict this category to areas that are not sensitive to helicopter activity, or delete this category entirely.

As explained previously, CATEXs are limited to actions that do not significantly affect the environment, and they cannot be applied if there are extraordinary circumstances in which a significant environmental effect may occur (40 CFR 1508.4). Moreover, the FAA has added language in the final Order that limits the applicability of CATEX 5–6.5.h to the establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas. Thus, if the establishment or modification of a helicopter route over a major thoroughfare would result in a significant noise increase in an adjacent residential or other noise sensitive area, the CATEX could not be used for that action. Regarding the CEQ guidance cited by one of the commenters, the FAA is not aware of any factor that would warrant limiting application of CATEX 5–6.6.h to only certain areas of the country.

In support of deleting CATEX 5–6.5.h, one commenter stated that noise along major thoroughfares does not mask helicopter noise. Helicopter noise can be much more annoying than local thoroughfare noise and evidence shows that actions in this category have a high likelihood of causing potentially significant effects.

Helicopter routes are often established along highways or rivers because these provide a visual reference point for pilots operating under VFR. These routes may provide a degree of noise

abatement by channeling helicopters over non-residential areas; for NEPA purposes, however, the FAA does not rely on ambient noise to mask or reduce the noise impact of the action under review. As stated previously, the CATEX as revised in the final Order applies only to the establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas.

One commenter stated that helicopters do not follow precise routes, and therefore impact broad areas. Since ''over major thoroughfares'' is not a location that can guarantee avoidance of significant effects, the FAA should delete this CATEX.

Generally, helicopter routes established and charted by the FAA are voluntary, and are designed to be flown under VFR. Major thoroughfares are frequently used as visual reference points for pilots operating under VFR. As revised in the final Order, the CATEX only applies to the establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas; therefore, if the establishment or modification of a helicopter route over a major thoroughfare would result in a significant noise increase in an adjacent residential or other noise sensitive area, the CATEX could not be used for that action.

In support of deleting CATEX 5–6.5.h, one commenter stated that a single new helicopter flyover could be considered a significant impact.

As revised in the final Order, the CATEX only applies to the establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas. As explained in Exhibit 4–1 the Order, the FAA uses the cumulative DNL metric, rather than a single event metric, to determine the significance of aircraft noise impacts.

One commenter stated that flying over sensitive areas en route to the ''major thoroughfares'' would obviously be a potentially significant effect, since CATEX 5–6.5.h implies that actions involving changes in routes outside ''major thoroughfares'' would not qualify for a CATEX. Since the whole of the action must be included in an environmental review, these effects must also be considered, adding to the reasons why the FAA should delete this CATEX.

The impacts associated with helicopters using entry and exit points that are part of the establishment or modification of a helicopter route would be considered in determining whether the action could significantly increase noise over noise sensitive areas. If such an increase could occur, the CATEX would not apply.

One commenter stated that the number of helicopter flights allowed is not restricted under the CATEX. Helicopter use is increasing, and this trend is likely to continue. An action in this category that previously may have only affected a few flights per day could now result in new impacts from helicopter flyovers several times per hour, clearly resulting in potentially significant effects. The FAA should either indicate the maximum number of flights to which the CATEX applies or delete the CATEX.

Establishment or modification of helicopter routes does not involve authorization for or limitations on the number of helicopters that may operate along helicopter routes. The FAA has determined that the actions covered by the CATEX normally do not individually or cumulatively have significant impacts. Before applying a CATEX to an action, the FAA is required to determine whether the action involves extraordinary circumstances in which a significant impact could result. Where such extraordinary circumstance exists, the CATEX could not be used.

In support of deleting CATEX 5–6.5.h, one commenter stated that because of increased helicopter use by organizations not under the jurisdiction of the FAA, cumulative impacts are increasingly likely from actions covered by the CATEX.

Paragraph 5–2 of the Order 1050.1F requires that in determining whether to apply a CATEX to an action, the FAA must consider extraordinary circumstances, including whether there is a likelihood that the action would directly, indirectly, or cumulatively create a significant impact on the human environment.

One commenter stated that impacts from helicopter activity over major thoroughfares vary with normal variations in climatic conditions. Since such variations are not ''extraordinary circumstances,'' CATEX 5–6.5.h should either exclude actions in areas with climatic conditions that at any time during the course of a year could cause significant effects, or the CATEX should be deleted.

The FAA uses DNL, which captures variations in weather over the course of the year, to assess the significance of an action's noise impacts. If the action could result in a significant noise impact, this CATEX would not apply.

In support of deleting the CATEX, one commenter noted that CEQ states that when substantiating a new CATEX, a Federal agency should ''make findings to explain how the agency determined the proposed category of actions does not result in individual or cumulatively significant environmental effects.'' The commenter stated that the FAA has not presented evidence that these effects would not occur.

As explained previously, CATEX 5–6.5.h of the Order is not new. The only changes from Order 1050.1E are: (1) Clarification that ''establishment'' of a helicopter route includes modification; and (2) explicitly limiting the CATEX to the establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas. Neither of these changes falls under the CEQ language quoted by the commenter. Moreover, under the latter change each proposal to establish or modify a helicopter route would have to undergo an initial analysis to determine if the action could have significant noise impacts.

One commenter noted that CEQ states that ''[M]onitoring and evaluating implemented actions internally or collaboratively with other agencies and groups can provide additional, useful information for substantiating a CATEX.'' The commenter questioned where the FAA has conducted monitoring to verify that the action defined in CATEX 5–6.5.h would not have significant effects. The commenter questioned what mechanism the FAA has in place to monitor, track, or enforce the proposed routing along ''major thoroughfares.'' Since no such methods exist to verify or enforce compliance, the FAA should expect non-compliance, and therefore the FAA should delete this CATEX.

As explained previously, CATEX 5–6.5.h of the Order is not new. Neither of the changes to the CATEX from Order 1050.1E falls under the CEQ language quoted by the commenter. In any event, the CATEX as revised in the final Order is limited to establishment or modification of helicopter routes that do not have the potential to significantly increase noise over noise sensitive areas. This would have to be determined before the CATEX could be applied.

III. Legislative CATEXs

Several commenters stated that the legislative CATEXs are too broad with some stating that the FAA Reauthorization of 2012 did not create any CATEXs but provided only a legal presumption and others stating that it

was contrary to the intent of the FAA Reauthorization of 2012.

The FAA disagrees that it has incorrectly interpreted the intent of the FAA Reauthorization of 2012. The title of Section 213 of the FAA Reauthorization of 2012 is ''Acceleration of NextGen technologies'' and the title of Section 213(c) is ''Coordinated and expedited review.'' In both instances, Congress has identified its intent to ''accelerat[e]'' and ''expedite[]'' the implementation of NextGen technologies. A reading of Section 213 at large, and section 213(c) specifically, bears out the intent of these sections as identified in their titles. Section 213(c) of the FAA Reauthorization of 2012 includes two subsections, Section 213(c)(1) and Section 213(c)(2), both of which are reasonably interpreted as providing the FAA with tools to expedite implementation of NextGen technologies. Since Congress established these CATEXs in the FAA Reauthorization of 2012, they cannot be considered to be inconsistent with the intent of the act. The FAA has added these two legislatively created CATEXs to Order 1050.1F consistent with Section 213(c) of the FAA Reauthorization of 2012. Under Section 213(c)(1) of the FAA Reauthorization of 2012, navigation performance and area navigation procedures developed, certified, published, or implemented under that section shall be presumed to be covered by a CATEX under Chapter 3 of FAA Order 1050.1E (currently CATEX 5–6.5.q of Order 1050.1F) unless extraordinary circumstances exist. Under Section 213(c)(2) of the same Act, Congress identified navigation performance or PBN procedures that, if certain conditions are met, are presumed to have no significant impacts on the human environment and for which the FAA ''shall issue and file a CATEX'' (currently 5–6.5.r of Order 1050.1F).

One commenter stated that these provisions create ''legal presumptions,'' not CATEXs. According to Black's Law Dictionary 1186 (6th Ed. 1990), ''a presumption of law is one which, once the basic fact is proved and no evidence to the contrary has been introduced, compels a finding of the existence of the presumed fact.'' In the context of Section 213(c)(1) of the FAA Reauthorization of 2012, the Act's language had the effect of creating a legislative CATEX, not merely a legal presumption.

Prior to the legislative CATEX, proposed procedures below 3000 feet above ground level were normally assessed in an EA under Order 1050.1E. This was explained in guidance that the FAA put out in 2012 (see below). Congress, in revising the statute, intended that the procedures be evaluated for NEPA purposes under a CATEX, not an EA, as was done previously.

Furthermore, absent the statutory language, the FAA's ordinary practice with respect to implementation of a CATEX would be to review the navigation procedures now identified in Section 213(c)(1) to determine: First, *if* an existing CATEX might apply, and, second, if any extraordinary circumstances precluded application of the CATEX. Thus, the FAA's ordinary CATEX process would create two ''off ramps''—the decision of whether an applicable CATEX exists and whether the navigation procedure in question creates extraordinary circumstances. The language of Section 213(c)(1) changes this ordinary procedure, however. Under Section 213(c)(1), Congress has identified specific navigation procedures for which a CATEX *does* apply, and creates only one ''off ramp''—the presence of extraordinary circumstances. This is a notable change in some circumstances, because certain of the procedures that now fall under CATEX 1 (CATEX 5–6.5.q) previously were considered actions normally requiring an EA. If the commenter's view were correct, Congress would have created a provision with no more legal import than to duplicate current FAA processes under NEPA, which is not the case.

Similarly, with respect to the second legislative CATEX, Congress did not merely create a legal presumption of CATEX applicability. With respect to this CATEX, Congress indicated that for any navigation performance or other PBN procedure that ''. . . in the determination of the Administrator, would result in measurable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis, as compared to aircraft operations that follow existing instrument flight rules procedures in the same airspace, shall be presumed to have no significant affect [sic] on the quality of the human environment and the Administrator shall issue and file a CATEX for the new procedure.'' Procedures meeting the conditions of the legislative CATEX are not subject to extraordinary circumstances review. The requirement that FAA ''shall issue and file'' a CATEX for procedures meeting the environmental conditions set out in Section 213(c)(2), clearly creates a new CATEX.

Under standard statutory interpretation principles, every provision of law is to be given meaning and effect. Section 213(c) of the FAA Reauthorization of 2012 can only be given meaning and effect if the provisions have some practical application. The purpose of Congress in this legislation was to provide the FAA with additional tools for NEPA compliance to accelerate NextGen technologies. Therefore, Section 213(c) cannot be interpreted as merely espousing a legal presumption that would be duplicative of existing applications of the law.

The commenter also indicates a belief that the statutory CATEXs are ''too broad.'' Because these CATEXs were established by an act of Congress, they have the force and effect of law and the FAA does not have the discretion to determine that the CATEXs at issue are ''too broad.'' The FAA must apply the statutory language consistent with the most reasonable interpretation of that language using the legal principles of statutory construction. Order 1050.1F is updated to reflect the CATEXs as written in the FAA Reauthorization of 2012 and interpreted using well settled principles of statutory construction.

Two commenters stated that the FAA cannot rely on the legislation to create these two CATEXs and therefore a CATEX justification package should be developed to show how these actions do not individually or cumulatively have the potential for significant impacts in the absence of extraordinary circumstances.

It is not uncommon for Congress to provide for specific CATEXs or state in the legislation that certain actions should be presumed to have no significant impacts and therefore should be categorically excluded, as was the case for the two legislative CATEXs provided for in Section 213 (c) of the FAA Reauthorization of 2012. These types of CATEXs are provided for by law rather than being created at the discretion of the agency. Because these legislative CATEXs are not the product of administrative discretion, the FAA need not prepare a CATEX justification package for submission to CEQ. See footnote 1 of the CEQ's CATEX Guidance.

Several commenters stated that the FAA has misinterpreted the FAA Reauthorization of 2012 language and the intent of Congress was to only create one CATEX.

Congress set forth two separate provisions in the FAA Reauthorization of 2012 dealing with CATEXs, Section 213(c)(1) and Section 213(c)(2). These provisions are under separate subparagraphs, and contain different criteria and limitations for application

of the CATEXs, as described in a previous comment response above. Given the differences in the statutory language and the structure of these statutory provisions, it is evident that Congress did not create a single CATEX in these provisions.

Several commenters expressed concerns that the legislated CATEXs do not adequately address potential environmental impacts. In this regard, commenters specifically cited noise including potential noise focusing effects of PBN procedures and noise on residents living near freeways, health effects, air quality, greenhouse gas emissions and climate change, economic impacts including diminished property values, fuel consumption and fuel dumping, environmental justice, and cumulative impacts. One commenter stated that Order 1050.1F contains no provision to verify with ongoing monitoring that a CATEX determination about noise reduction with a PBN procedure was correct.

A CATEX by definition in CEQ regulations means a category of actions which do not individually or cumulatively have a significant effect on the human environment. The first legislative CATEX, 5–6.5.q can only be used when it is determined that no extraordinary circumstances exist that could cause a potential significant impact. This includes a determination that the proposed action does not have the potential to have significant impacts with respect to a variety of environmental categories. In addition, environmental laws and requirements other than NEPA (*e.g.,* the Clean Air Act, E.O. 12989, Environmental Justice), continue to apply. The FAA has issued guidance on how to apply CATEX 1 (CATEX 5–6.5.q) available at: *http://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/guidance/.*

The second legislated CATEX is unique in that it prohibits the FAA from applying extraordinary circumstances that would consider a variety of environmental impacts if the Administrator has determined that the procedures would result in measurable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis, as described in a previous comment response above. However, as with CATEX 1 (CATEX 5–6.5.q), environmental laws and requirements other than NEPA continue to apply.

With respect to the comment about the accuracy of the FAA's noise determination when applying a CATEX, the FAA expends consideration effort and resources to improve and verify the accuracy of its noise models. Short-term noise monitoring is not as accurate as FAA's computer modeling at calculating an annual Day Night Average Sound Level (DNL), which is FAA's primary noise metric.

Several commenters were concerned about safety from implementation of the procedures covered by the legislative CATEXs.

The actions covered by the legislative CATEXs are intended to cover PBN procedures. Each procedure is evaluated for safety prior to implementation, as is true with any new procedure regardless of whether it is subject to the new legislative CATEXs or not.

Several commenters stated that extraordinary circumstances should be applied to the legislative CATEXs.

The statutory language establishing the CATEX now located at CATEX 5–6.5.q of the Order, known as CATEX 1, specifically indicates that actions taken in accordance with this CATEX are subject to extraordinary circumstances review. However, the language in the FAA Reauthorization of 2012 establishing CATEX 5–6.5.r of the Order, known as CATEX 2, provides that the procedure is subject to a review to determine whether it results ''in measurable reductions in fuel consumption, carbon dioxide emissions, and noise, on a per flight basis, as compared to aircraft operations that follow existing instrument flight rules procedures in the same airspace. . .'' If these conditions are met, the statute states that the procedure ''shall be presumed to have no significant affect [sic] on the quality of the human environment and the Administrator shall issue and file a categorical exclusion for the new procedure.'' The language of the legislation both creates a legal presumption that there are no significant effects on the quality of the human environment if the identified conditions are met, and directs the FAA to apply the CATEX (regardless of extraordinary circumstances).

Several commenters questioned the FAA's claim that the legislative CATEXs have no minimum altitude thus giving the FAA an exemption from all noise impact evaluations for these actions.

The legislative CATEXs were provided for in the FAA Reauthorization of 2012 and did not limit application to any specific altitude. CATEX 5–6.5.q [CATEX 1] still applies extraordinary circumstances which would not allow its application to procedures which have the potential to create significant noise impacts in noise sensitive areas. Although CATEX 5–6.5.r [CATEX 2] does not apply significance criteria, it does state that there must be measureable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis.

One commenter noted that the FAA had prepared an EA for PBN procedures proposed as part of the Optimization of the Airspace and Procedures in the Metroplex (OAPM) and that this precedent precludes consideration of a CATEX for RNAV/RNP in a terminal airspace.

The FAA disagrees that an EA for certain projects precludes the appropriate use of a CATEX for other similar projects. An agency may make a determination on a case-by-case basis to elevate the NEPA review to an EA for a particular action even though a CATEX may be available. Nothing in the CEQ Regulations or this Order precludes the future use of a CATEX when an EA is prepared for a particular action.

Several commenters stated that environmental impact review and noise testing should be required when there are changes in flight procedures and patterns.

FAA actions must adhere to NEPA. In the case of the two legislative CATEXs, Congress has established the conditions in CATEXs 5–6.5.q and 5–6.5.r through legislation. CATEX 5–6.5.q [CATEX 1] applies extraordinary circumstances. One of the extraordinary circumstances is the potential for significant noise impacts to noise sensitive areas. The FAA employs noise screening to consider whether there are extraordinary circumstances related to noise. Although CATEX 5–6.5.r [CATEX 2] does not allow the consideration of extraordinary circumstances, it does state that there must be measureable reductions in fuel consumption, carbon dioxide emissions, and noise on a per flight basis.

Several commenters stated that there should be public involvement when applying the legislative CATEXs.

The FAA's public involvement and notification requirements are consistent with the CEQ's requirements for public notice and comment. The legislative CATEXs would be implemented in the same manner as other CATEXs. The FAA has acknowledged that there may be circumstances where public notification of a CATEX would be appropriate; however, these decisions are made on a case-by-case basis (see Paragraph 5–4).

Two commenters suggested that the Order reference where the list of ''core airports'' can be found and include the definitions of medium and small hub airports. One commenter stated the FAA Reauthorization of 2012 specifically mentioned OEP airports (35 airports)

and not the core airports as written in Order 1050.1F.

Detailed guidance on how to apply 5–6.5.q (CATEX 1) is available in the 1050.1F Desk Reference which includes an appendix providing the list of airports the CATEX applies to.

The Core Airports are the 29 large hub airports and Memphis International Airport. The definitions of medium and small hub airports are defined within the National Plan of Integrated Airport Systems (NPIAS) Report. Large hubs are those airports that each account for at least one percent of total U.S. passenger enplanements; medium hubs for between 0.25 percent and one percent, small hubs for between 0.05 percent and 0.25 percent.

The FAA replaced OEP with an initiative to incorporate NextGen technology into the National Airspace System based on the Core Airports. In December 2012, the FAA interpreted the phrase ''35 OEP airports'' in Section 213 to refer to the 30 Core Airports.

One commenter stated that the legislative CATEXs should only be applied to airports that have a current ALP, have a current Noise Exposure Map on file, have engaged in a Part 150 Study and have eliminated all incompatible land use in the airport vicinity with reference to compatibility guidelines included in Appendix A of Part 150.

Because the CATEXs at issue were established by law (the FAA Reauthorization of 2012, Public Law 112–95), the FAA does not have the discretion to add additional limitations to their applicability beyond the terms provided in the statute.

Several commenters stated the legislative CATEXs violate NEPA.

A CATEX is a type of NEPA review and is recognized by CEQ. The purpose of Congress in the FAA Reauthorization of 2012 was to provide the FAA with additional tools for NEPA compliance to accelerate NextGen technologies. It is not uncommon for Congress to provide for specific CATEXs or state in the legislation that certain actions should be presumed to have no significant impacts and therefore should be categorically excluded, as was the case for the two legislative CATEXs provided for in Section 213(c) of the FAA Reauthorization of 2012.

One commenter recommended that the FAA align its environmental procedures more closely with the clear statutory mandate in Section 208 of the FAA Reauthorization of 2012 and with NEPA; and that, in doing so, the FAA would fulfill the directive in Section 208 of the 2012 Act to set specific quantitative goals for environmental impacts and measure ''actual operational experience against those goals, taking into account noise pollution concerns of affected communities to the extent practicable in establishing the environmental goals. . . .''

The FAA's environmental procedures are aligned with NEPA. Order 1050.1F has been reviewed by the CEQ for adherence to NEPA. Section 208 of the FAA Reauthorization of 2012 is a separate provision involving in part the establishment of specific quantitative goals for the safety, capacity, efficiency, performance, and environmental impacts of each phase of NextGen planning and development activities and the measurement of actual operational performance against those goals. Section 208 does not address the environmental impacts of proposed site-specific NextGen procedures and does not guide or govern NEPA reviews.

One commenter stated the FAA has not solved the problem of how to assess the noise on a per-flight basis, but seems poised to adopt the recommendation of the CATEX2 Task Group to employ a net noise reduction method.

The CATEX in Order 1050.1F simply reflects the legislative wording. The FAA is considering how to assess noise on a per-flight basis and has asked for public comments on the CATEX2 task group recommendation.

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.

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