US-Citizens Aviation Watch Association

a not-for-profit corporation

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Via facsimile, email and regular mail

Federal Aviation Administration
Office of the Chief Counsel
Attn: Rules Docket (AGC-200), Docket No. 29797
800 Independence Avenue S.W., Room 915G,
Washington, D.C. 20591

Re: Comment on proposed revisions to FAA Order 1050

The Federal Aviation Administration (FAA) invited comment on this proposal at 64 Fed. Reg. 55526 (10/13/99). Order 1050 outlines the procedures by which the FAA will conform to the requirements of NEPA and the CEQ Regulations. NEPA requires that before taking an action that might significantly effect the quality of the human environment, the FAA give careful consideration to the potential environmental consequences of the proposed action. The FAA must also consider the cumulative environmental impact of actions.

The proposed FAA actions would have significant impacts on various aspects of the human environment such as air (especially hazardous and toxic emissions), water, noise and ground pollution as well as consequential effects on the upper atmosphere (greenhouse gases) and especially our climate (contrails form cirrus clouds which influences our weather), and public health. Aircraft noise also constitutes one of the principal environmental impacts associated with the FAA's management of navigable airspace.

Historically, the FAA has invoked a variety of categorical exclusions to purportedly "comply" with NEPA, while avoiding the need to open a public dialogue regarding possible environmental consequences associated with those proposed changes.

For example, current FAA Order 1050.1D, Appendix 4, paragraph 5.j allows a blanket categorical exclusion for new or changed aircraft operations that occur above 3,000 feet above ground level ("AGL"). That exclusion prevails, without regard to the anticipated intensity of air traffic, without regard to the type of aircraft involved, and without regard to the time-of-day when those operations might occur. Nor does that blanket exemption allow any consideration for impact on threatened or endangered species, effect upon wilderness or recreation areas, or any consideration of effect upon the simple quiet and peaceable possession of property below. Order 1050.1E proposes to continue this exclusion.

As a matter of common knowledge, everyone understands that aircraft make noise above 3,000 feet AGL, as well as when they are below that altitude. We believe that noise from aircraft can, and does, have a significant impact upon many aspects of the human environment, even when aircraft are above 3,000 feet AGL.

On the other hand, there is nothing in the common knowledge that would clearly explain the significance of the 3,000 feet AGL threshold invoked under the categorical exclusion identified above.

You shouldn't ignore noise impacts when aircraft reach an arbitrary altitude. The issue is noise, not altitude. There can be no specific elevations above a given ground level above which impacts are suddenly eliminated. Topography, atmospheric conditions (e.g., humidity), temperature, wind direction and velocity, etc., all can affect sound levels as perceived on the ground.

As published, Order 1050.1E also effectively proposes to allow categorical exclusions for all flight procedure changes that do not affect "noise sensitive areas," as redefined in the proposal. In essence, the proposal redefines "noise sensitive area" to mean only those areas afflicted by 65 DNL noise impacts which are supposedly averaged and which ignore sudden, peak levels in excess of the average. Proposing, or even suggesting, such a categorical exclusion shocks the conscience. First, it is common knowledge and the US-Environmental Protection Agency claims that noise harms human health at 55 DNL. Second, to the extent individuals enjoy peace and quiet, then subjecting them to additional noise impacts from aircraft, whether for a short duration or longer periods, clearly has the potential to significantly affect the quality of the human environment. To suggest that the only people who would object to noise are those who are already suffering from elevated noise levels amounts to nothing less than an absurd contention.

Nowhere has the FAA ever considered the cumulative impacts associated with its categorical exclusions. And proposed Order 1050.1E reaffirms and even expands those categorical exclusions, without offering any consideration whatever of the potential cumulative impacts.

Inclusion of the "land use compatibility" table from Part 150 implies at least that the noise impacts outlined therein amount to a default definition of what constitutes a "significant effect on the quality of the human environment."

Part 150 was adopted pursuant to a congressional mandate to define a uniform metric for assessing sound impacts from airports, to provide a structure for an FAA-administered grant program, and to allow the FAA to oversee local noise mitigation efforts to assure that those local efforts did not run afoul of the commerce clause of the United States Constitution.

In directing the FAA to adopt the Part 150 regulations, Congress did not intend to give the FAA *carte blanche* to define on a universal basis what constitutes a "significant effect on the quality of the human environment."

Certainly, with regard to any suggestion that a "65 DNL" threshold, or the provisions of the Part 150 "land use compatibility" table might constitute default definitions relative to the NEPA threshold standard of "significant effect on the quality of the human environment," the FAA has never conducted a rule making that would have offered the public meaningful notice that the FAA intended to adopt such a rule.

To the extent the FAA regards the current proceeding, involving the proposed Order 1050.1E, as something other than a rule making, the FAA has not provided such a notice here either.

Accordingly, we ask that either:

- The final Order 1050.1E delete all references to Part 150, its attendant "land use compatibility table," and any references to 65 DNL as a meaningful threshold; or

- The final Order 1050.1E expressly state that notwithstanding any inclusion of or reference to Part 150, any inclusion of or reference to the Part 150 "land use compatibility" table, or any suggestion that "65 DNL" constitutes a meaningful threshold, NONE OF THOSE REFERENCES, INCLUSIONS OR REFERENCES ARE MEANT TO SUGGEST IN ANY WAY THAT THE SUBSTANCE OF THOSE PROVISIONS DEFINES WHAT MAY OR MAY NOT AMOUNT TO A "SIGNIFICANT AFFECT ON THE QUALITY OF THE HUMAN ENVIRONMENT" FOR PURPOSES OF ANALYSIS UNDER NEPA.

As a related issue, we also ask that:

- The final Order 1050.1E make clear that for purposes of assessing whether a proposed action may have a "significant effect on the quality of the human environment," the "DNL" metric constitutes merely one of a variety of different sound metrics that must be analyzed in order to gauge whether the proposed action will have such a "significant effect."

We also believe that individual noise events can and do have a significant adverse impact upon the quality of the human health and environment. Therefore, any noise impact analysis

the FAA offers should include quantification of the magnitude and frequency of individual noise events.

Accordingly, to the extent that noise-related categorical exclusions are being considered for inclusion in the current proposal, We ask that for each of those proposals:

1. Each noise-related categorical exclusion be deleted from the final order, because the FAA has never articulated whether or not each such categorical exclusion may in fact allow a "significant impact on the quality of the human environment"; and,
2. Before finally adopting any noise-related categorical exclusion, the FAA first prepare factual findings and/or a competent technical analysis, explaining the range of potential noise impacts that might occur under the guise of each such categorical exclusion. Those factual findings and technical analysis should include a definition of single event noise level impacts that such categorical exclusion might allow. Second, the FAA should then provide the public an opportunity to comment on the categorical exclusion proposals in light of the FAA's supporting findings or analysis.

Without a public explanation of anticipated noise impacts, definition and use of categorical exclusions under Order 1050 will violate the NEPA requirement for a careful public consideration of environmental consequences to the range of actions that a given proposal will allow.

Regarding change 11 (c): Treaties with international organizations, governments and/or authorities must not overrule United States law that is designed to protect the health, safety and environment of its citizens. Other international entities could be more concerned about commerce, over human health and our environment.

Regarding change 11 (f), (3), (a): The change must not categorically exclude federal assistance, Airport Layout Plan (ALP) approval, or FAA installation of deicing/anti-icing facilities just because they comply with National Pollutant Discharge Elimination System (NPDES) since many state permits are of minimum quality.

Generally, as to each and every categorical exclusion defined in the Order 1050.1E proposal, We ask that for each of those proposals:

1. Since each and every of those categorical exclusions lacks an underlying analysis of possible cumulative impacts, that each and every categorical exclusion be deleted from the final order; and,

2. Before finally adopting any categorical exclusion, that the FAA must first prepare factual findings and/or a competent analysis, explaining the range of potential impacts that might occur under the guise of such categorical exclusion. Second, the FAA should then provide the public an opportunity to comment on the categorical exclusion proposals in light of the FAA's supporting findings or analysis.

Without a public explanation of cumulative impacts, definition and use of categorical exclusions under Order 1050 will violate the NEPA requirement for a careful public consideration of the environmental consequences to the range of actions that the proposal will allow.

To the extent the final Order 1050.1E allows any categorical exclusions, the actual invocation of any such categorical exclusion should require a prior invitation to the public for comment, in order to ascertain in a meaningful manner whether any "extraordinary circumstances" exist.

Because we are just now beginning to understand the significant damage that airport and aircraft operations has on our environment and public health, we oppose most of the decisions to permit categorical exclusions of any sort. Every aspect of aviation needs to be studied objectively and considered for its potential effect on our environment and thus, upon human health. Therefore, the FAA must also consider the global effects of aviation and should perform a global Environmental Impact Statement.

To the extent that "advisory actions" under 14 C.F.R. Part 157 effectively constitute permitting actions by the FAA, which permitting actions allow the construction of noise generating facilities such as heliports, each such "advisory action" should require at least a prior environmental assessment by the FAA. "Advisory actions" should not escape review under NEPA.

The essential inquiries required under NEPA are whether a proposed action will have a significant effect on the quality of the human environment, and if so, how extensive those effects might be, whether alternatives might exist, and what mitigating measures might be available.

On behalf of our membership some who have received notice of this proposal at a late date, and because of the complexity and far reaching ramifications, we have requested an extension, so that a more complete answer may be given on behalf of the American people. To date, this has not been granted.

Sincerely,

Jack Saporito
President

c: Honorable Henry Hyde
Honorable Carol Browner
Honorable Kathleen McGinty
Honorable Janet Reno