Federal Aviation Administration

Memorandum

FAA Order 1050.1E, Change 1, Guidance Memo #5[1]

Date: December 6, 2012

To: FAA Lines of Business and Managers with NEPA Responsibilities

From: Julie Marks, Manager, Environmental Policy and Operations, AEE-400

Subject: **Guidance for Implementation of the Categorical Exclusion in Section 213(c)(1) of the *FAA Modernization and Reform Act of 2012***

This memorandum provides guidance to implement a new legislative categorical exclusion (213(c)(1) CATEX) that was established by Congress in the FAA Modernization and Reform Act of 2012 ("Act"). Implementation of the 213(c)(1) CATEX is effective as of the date of this memorandum.

The CATEX in Section 213(c)(1) of the Act provides:

> (c) COORDINATED AND EXPEDITED REVIEW.
>
> "(1) In General.—Navigation performance and area navigation procedures developed, certified, published, or implemented under this section shall be presumed to be covered by a categorical exclusion (as defined in section 1508.4 of title 40, Code of Federal Regulations) under chapter 3 of FAA Order 1050.1E unless the Administrator determines that extraordinary circumstances exist with respect to the procedure."

Implementing Instructions

The 213(c)(1) CATEX is specific to procedures described under Section 213 of the Act at:

- 35 Operational Evolution Partnership (OEP) airports and any medium or small hub airport located within the same metroplex area considered appropriate by the Administrator,
- and at 35 non-OEP airports.

[1] This document is guidance memo #5 for FAA Order 1050.1E (Change 1). It is the fifth in a series of memos to provide additional guidance on FAA's NEPA requirements, procedures, and practices.

In March 2011 the FAA replaced the OEP with an initiative to incorporate NextGen technology into the National Airspace System based on the Core Airports (see Attachment 1). The Core Airports consist of the 29 large hub airports plus Memphis International Airport. The FAA interprets the phrase '35 OEP airports' in section 213 to refer to the 30 Core Airports. The FAA identified the RNAV and RNP to be "developed, certified, published, or implemented" at Core airports, as well as at medium and small hub airports located within the same metroplex area as the Core Airports, to which this CATEX will potentially apply at the following website:

http://www.faa.gov/air_traffic/flight_info/aeronav/procedures/reports/

The FAA also identified the RNP to be "developed, certified, published or implemented" at non-Core Airports at this website pursuant to section 213 (b)(1). The 213(c)(1) CATEX does not apply to other types of proposed procedures or other airports. Most proposed air traffic procedures are covered by established CATEXes under paragraph 311 in Chapter 3 of FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures*. This new 213(c)(1) CATEX may be used for proposed RNP/RNAV procedures at the specified airports in addition to other CATEXes that may also apply.

FAA Order 1050.1E lists two categories of procedures in paragraphs 401m and 401n that normally require an Environmental Assessment (EA). These are:

> "New instrument approach procedures, departure procedures, en route procedures, and modifications to currently approved instrument procedures which routinely route aircraft over noise sensitive areas at less than 3,000 feet above ground level (AGL)."
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> "New or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet AGL."

Proposed RNP/RNAV procedures that have to date normally required an EA under the provisions of Order 1050.1E will, as of the date of the FAA Modernization And Reform Act of 2012, February14, 2012, fall within the scope of the 213(c)(1) CATEX at the specified airports absent extraordinary circumstances. Procedures other than RNP/RNAV still fall under the provisions of paragraphs 401m and 401n.

The 213(c)(1) CATEX is subject to the same requirements as other CATEXes in Order 1050.1E. The statutory language specifically states that the Administrator must determine if extraordinary circumstances exist before applying this legislative CATEX. Extraordinary circumstances exist when a proposed action involves one or more of the circumstances described under paragraph 304 of Order 1050.1E and may have a significant impact. Screening[2] and other consultation or analyses that are performed to determine the potential for extraordinary circumstances apply to the 213(c)(1) CATEX, just as they do to other procedural CATEXes. If extraordinary circumstances do not exist, FAA's environmental review will be completed with a documented CATEX that includes the results of screening and any other reviews that were performed (i.e., an EA will not be prepared). If extraordinary

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[2] Screening is a process where a first order analysis is performed to determine if there is a potential for significant environmental impacts. Screening can be completed using FAA approved look up tables and/or screening tools. Specific guidance around the appropriate use of the different screening mechanisms and the interpretations of the results exist and should be referenced during the screening process.

circumstances are found to exist, FAA will prepare an EA or Environmental Impact Statement (EIS) in accordance with Order 1050.1E.

Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) governing cumulative effects and connected actions continue to apply to proposed RNAV and RNP procedures at the specified airports. Proposed RNP/RNAV procedures at the specified airports must not be inappropriately segmented from larger projects or evaluated in isolation from potential cumulative effects with other proposed agency actions (e.g., conventional and PBN procedures for implementation at the same location and the same time, or runway development and associated PBN procedures). Environmental laws in addition to NEPA also continue to apply if they are relevant, e.g. the Clean Air Act.

Background

FAA Order 1050.1E (Change 1) *Environmental Impacts: Policies and Procedures* (March 20, 2006) establishes agency-wide policies and procedures for compliance with NEPA and the implementing regulations issued by CEQ (40 CFR parts 1500-1508). CATEXes are categories of actions which do not individually or cumulatively have a significant effect on the environment and are, therefore, not subject to further review in an EA or EIS. A CATEX is not an exemption from NEPA review. Proposed actions that fall under CATEXes are subject to a sufficient amount of review to allow the FAA to determine that no extraordinary circumstances apply that would require more detailed environmental review with an EA or EIS.

The 213(c)(1) CATEX was created by Congress with the intent to expedite environmental reviews of proposed RNP/RNAV procedures at certain airports. We expect this will be achieved through the ability to use more documented CATEXes for these procedures in lieu of EAs that are concluded with Findings of No Significant Impact (FONSIs). Some concern has been expressed that the 213(c)(1) CATEX enables NextGen procedures to be implemented without appropriate consideration of potential environmental impacts, especially noise impacts. The Act addresses this concern by placing the 213(c)(1) CATEX within the context of FAA Order 1050.1E and making the 213(c)(1) CATEX subject to extraordinary circumstances. Noise screening and other environmental reviews that apply to the FAA's administratively established CATEXes also apply to the 213(c)(1) CATEX. Proposed procedures that would trigger extraordinary circumstances, including significant noise impacts, cannot be CATEXed.

The Act includes a second legislative CATEX in Section 213(c)(2). This second CATEX is subject to future guidance and is not within the scope of this memorandum.

Effective Date

The use of the legislative CATEX in Section 213(c)(1) of the FAA Modernization and Reform Act of 2012 was dependent on FAA identifying the procedures and airports to which this CATEX will potentially apply. Since FAA has identified the procedures and airports at the above referenced FAA website, the CATEX can now be used and is effective immediately. The CATEX will also be incorporated into the revision of Order 1050.1E.

For further information, contact:

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ATTACHMENT 1

FAA Core Airports

1) Hartsfield-Jackson Atlanta
2) Boston Logan
3) Thurgood Marshall Baltimore-Washington
4) Charlotte Douglas
5) Ronald Reagan Washington National
6) Denver
7) Dallas-Fort Worth
8) Detroit Metropolitan-Wayne County
9) Newark
10) Fort Lauderdale-Hollywood
11) Honolulu
12) Washington Dulles
13) George Bush
14) John F. Kennedy
15) McCarran
16) Los Angeles
17) LaGuardia
18) Orlando
19) Chicago Midway
20) Memphis
21) Miami
22) Minneapolis-St. Paul
23) Chicago O'Hare
24) Philadelphia
25) Phoenix Sky Harbor
26) San Diego-Lindbergh Field
27) Seattle-Tacoma
28) San Francisco
29) Salt Lake City
30) Tampa