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December 15, 2008

Mr. Hank Krakowski
Chief Operating Officer
Docket Operations, M-30
Department of Transportation
1200 New Jersey Avenue, SE, Rm. W12-140
West Building Ground Floor
Washington, DC 20590-0001

Re: FAA-2008-1087-0006 Proposed Establishment of Special Air Traffic Rule, in the Vicinity of Luke Air Force Base (AFB), AZ

Dear Mr. Krakowski:

The Aircraft Owners and Pilots Association (AOPA), representing more than 415,000 members, oppose the establishment of Special Air Traffic Rule (SATR), in the Vicinity of Luke AFB, AZ as proposed based on the following reasons:

- The United States Air Force (USAF) has not made available the most recent Near Mid Air Collision (NMAC) data to confirm that a problem exists.
- The Luke SATR may not increase safety for general aviation, and may actually degrade safety in some cases.
- The Luke SATR closely resembles FAA Class C airspace communication requirements for Visual Flight Rules (VFR) entry, but may not meet the established criteria to create Class C airspace.
- The FAA should conduct an Environmental Assessment (EA) to determine if an Environmental Impact statement (EIS) will be required.

**The USAF has not made available the most recent Near Mid Air Collision (NMAC) data to confirm that a problem exists.**

The FAA is basing the proposed SATR on Luke AFB NMAC data that is obsolete and stale, and was measured prior to industry efforts to alleviate the problem. Since the inception of the Luke AFB SATR, AOPA has requested multiple times that the USAF provide the public with NMAC data that would justify the proposal. The only data that was provided was dated prior to 2000, and did not give the public or FAA an accurate representation of the current hazard.

Since 2000, the AOPA, local airports and volunteers, and the USAF have instituted comprehensive outreach programs to try and alleviate this issue without the need for additional airspace or regulation. Because recent NMAC data is not being released, the

results of this effort have never been made public, nor have the plans to continue this outreach. Moving ahead without taking into consideration the successes of these efforts is premature and presumptive.

AOPA requests that the FAA suspend the rulemaking process to review the most current NMAC data available to develop methods in increasing safety other than establishing a SATR. Consideration should be given to the reduction of NMAC incidents as a result of industry outreach efforts, and compared to the data that was compiled prior to these efforts.

**The Luke SATR may not increase safety for general aviation, and may actually degrade safety in some cases.**
There is multiple safety concerns related to the establishment of the Luke SATR area that may have not been acknowledged by the FAA or USAF during the development of this rule.

In the Notice of Proposed Rule Making (NPRM), the FAA makes the assumption that all Visual Flight Rule (VFR) aircraft are willing and able to participate in the proposed Luke SATR air traffic services system. There is also an assumption that all traffic requesting radar services from Luke Radar Approach Control (RAPCON) will always be granted access. This is not the case, and the FAA should consider the safety impacts to those VFR aircraft that are required to circumnavigate the SATR.

Due to the adjacent Phoenix Class B airspace, non-participating VFR aircraft attempting to transition the area to the east of the proposed SATR would be funneled into an area less than 5 nm wide, with a usable altitude of less than 1,000 feet msl. Considering that there is a 1,300 foot tower and bidirectional aircraft flow in this corridor, the area would be deemed unsafe and unusable.

The only alternative would be for pilots to transition the entire SATR or Class B complex, requiring the aircraft to fly lower over densely populated areas or desolate mountainous areas, both decreasing the overall safety of operations in the region.

**The Luke SATR closely resembles FAA Class C airspace communication requirements for Visual Flight Rules (VFR) entry, but may not meet the established criteria to create Class C airspace.**
When comparing the Luke SATR NPRM to 14 CFR Part 91.130 *Operations in Class C Airspace*, we found many similarities with regards to VFR pilot requirements for entry. The pilot requirements to contact Luke RAPCON prior to entry into the SATR are identical to the requirements of a pilot to enter Class C airspace, as outlined in 14 CFR Part 91.130. Therefore, the FAA should determine whether the Luke AFB qualifies under the operational criteria guidance listed in FAA Order 7400.2 *Handling Airspace Matters*, chapter 16 *Class C Airspace.* If a SATR is going to be created which mirrors the requirement of a particular class of airspace, the FAA should ensure that the

operational criteria are met for such a proposal. If Luke AFB does not provide an annual instrument operations count of 75,000 or greater, the FAA should consider alternate options. Furthermore, because of these similarities, the Luke RAPCON would have the right and option to deny service to VFR aircraft wishing to transition the airspace.

The Luke RAPCON hours of operation are currently listed as part-time, offering services only 16 hours during the day on weekdays, and not offering services at all on weekends and holidays. The NPRM section 93.165 states "*Before operating within the Luke Terminal Area* [SATR Area], *that a person establishes radio contact with Luke Radar Approach Control (RAPCON).*" There are no provisions within the proposed rule that allow aircraft to transition the SATR in the event that Luke RAPCON is not actively available. This amounts to a de facto Restricted Area that is active by default.

**The FAA should conduct an Environmental Assessment (EA) to determine if an Environmental Impact Statement (EIS) will be required.**

The Luke SATR has a significant impact on the human environment, including the underlying communities in the Phoenix area due to VFR aircraft forced to reroute. The FAA has developed criteria for issuing a Categorical Exclusion (CATEX) for an airspace initiative that does not have a significant impact on the National Airspace System (NAS). The Luke SATR should not qualify for CATEX due to the issues identified in these comments.

In accordance with the ruling by the United States Fifth Circuit Court of Appeals (No. 02-60288, Davis Mountains Trans-Pecos Heritage Association v. Federal Aviation Administration), any environmental studies conducted under the National Environmental Policy Act (NEPA) must include discussion regarding the full impact to civil and commercial aviation. The ruling states *"Civil and Commercial aviation are part of the modern human environment broadly defined, and because the [airspace] would impact aviation, NEPA required the Air Force to address that impact in the EIS."* The inverse to this ruling is also valid, any initiative that would have a significant impact on the surrounding airspace, as defined as the human environment, should be analyzed through a NEPA study.

The FAA, pursuant to its own regulations, must complete an EA for the proposed rule. The Council on Environmental Quality (CEQ) regulations (40 CFR Part 1500) requires that agency procedures identify three classes of action: 1) those that normally require an EIS, 2) a CATEX, or 3) require an EA but not necessarily an EIS (40 CFR 1507.3(b)(2)). The FAA sets forth each of these in Order 1050.1E. Actions that normally require an EA are listed in paragraph 401. Paragraph 401 includes within such actions "regulations (and exemptions and waivers to regulations) that may affect the human environment." Although regulatory actions in general are categorically excluded, the FAA Order specifically includes regulations that may affect the human environment as an action for which an EA is normally required.

Because the regulation proposed in the Luke SATR NPRM would affect civil aviation, it falls within the category of actions for which an EA is normally required. Furthermore, the impacts to underlying communities due to the non-participating, lower flying aircraft must be identified and considered.

The FAA should review the proposed rule carefully, giving consideration to these comments to determine whether or not justifications exist for the establishment of the airspace. These justifications should be based on current and relevant NMAC data that reflects the successes of industry outreach efforts, the ability for Luke AFB to meet FAA criteria for the airspace that this SATR most mirrors, safety concerns raised in these comments are properly mitigated, and only after the proper NEPA studies are conducted.

AOPA appreciates the opportunity to provide input on the impacts associated with this proposed SATR and looks forward to further coordination efforts between the civil aviation community, the FAA and the USAF to address these concerns.

Sincerely,

Randy Kenagy
Chief of Staff
Government Affairs