

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****[Docket No. 29797; FAA Order 1050.1E]****Environmental Impacts: Policies and Procedures****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice; request for comment.

SUMMARY: The Federal Aviation Administration (FAA) proposes to revise its procedures for implementing the National Environmental Policy Act, Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, with proposed Order 1050.1E Environmental Impact: Policies and Procedures. The revisions in proposed Order 1050.1E include: consolidating the FAA categorical exclusions in the appendixes to Order 1050.1D into the body of the order; proposing new and modified categorical exclusions; incorporating new procedures for preparing environmental documents; consolidating Order 1050.1D appendixes, which describe procedures for each program office, into the body of the order; and proposing new appendixes, such as on third-party contracting. This notice provides the public opportunity to comment on the proposed changes. All comments on the proposed changes will be considered in preparing the final version of Order 1050.1E.

DATES: Comments must be received on or before January 11, 2000.

ADDRESSES: Comments should be mailed, in triplicate, to the Federal Aviation Administration (FAA), Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 29797, 800 Independence Avenue, S.W., Room 915G, Washington, DC 20591. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m., weekdays, except Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 29797." The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Dr. Ann M. Hooker, Environment, Energy, and Employee Safety Division (AEE-200), Office of Environment and Energy, FAA, 800 Independence Avenue, S.W., Washington, DC 20591; telephone (202) 267-3554.

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

The FAA's current Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, provides FAA's policy and procedures for complying with the requirements of: (a) The CEQ regulations for implementing the procedural provisions of NEPA; (b) Department of Transportation (DOT) Order DOT 5610.1C, Procedures for Considering Environmental Impacts, and (c) other applicable environmental laws, regulations, and executive orders and policies. The FAA is proposing to replace Order 1050.1D with Order 1050.1E.

Request for Comment

As part of revising its environmental order, the FAA is seeking comment regarding sixteen proposed changes as described in the following synopsis of changes. FAA is also seeking comment on the feasibility of requiring that NEPA documents be submitted in electronic form suitable for access via the Internet.

Synopsis of Proposed Changes

The proposed FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, includes additions or changes to the current version of FAA Order 1050.1D which may be of interest to the public and other government agencies and organizations. Additional information on the proposed changes may be found in paragraph 5 (Chapter 1) of the draft order.

The revised Order 1050.1E would:

Change 1. Be reorganized to place the categorical exclusions for all FAA programs, including new and modified categorical exclusions, in chapter 3, eliminating the separate appendixes for each program (see Figure 3-2, Categorical Exclusions List). For reference, offices that originated and would normally use a categorical exclusion are listed in parentheses following each categorical exclusion. Additions and modifications to

categorical exclusions are identified in *italic print* in figure 3-2.

Change 2. Be reorganized to place the types of actions that normally require preparation of EAs and EISs for all programs into Chapters 4 and 5, respectively. Appendix 6, Airports, of Order 1050.1D (which references FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985) is continued as appendix 3 of this order. Order 5050.4A will be updated to ensure consistency with this order.

Change 3. Add a new appendix 1, Analyses of Environmental Impact Areas. Appendix 1 would contain an overview of procedures for implementing other applicable environmental laws, regulations, and executive orders in the course of NEPA compliance. Appendix 1 incorporates and updates Attachment 2 of Change 4 to Order 1050.1D, and amends each impact area to include a significant threshold paragraph where thresholds have been established.

Change 4. Provide guidance whereby the Air Traffic Service could accept the U.S. Department of Defense's (DOD) use of a categorical exclusion for actions relating to a request for designation of special use airspace when that request is subject to a categorical exclusion under the regulations of the requesting military department, except when FAA actions are subject to an EA, in accordance with a Memorandum of Understanding, dated January 26, 1998 (see paragraph 303c).

Change 5. Add a reference to Tribes in defining extraordinary circumstances when actions are likely to be highly controversial on environmental grounds based on concerns raised by a Federal, State, Tribal, or local government agency or by a substantial number of the persons affected by the action (see paragraph 304i); likely to violate Tribal water quality standards under the Clean Water Act and Safe Drinking Water Act (see paragraph 304h), or air quality standards established under the Clean Air Act Amendments of 1990 (see paragraph 304g); or likely to be inconsistent with any Tribal law relating to environmental aspects of the proposed action. Includes new guidance on government-to-government consultation with Tribes (see paragraph 212). Incorporates references to tribal consultation into appendix 1, section 11 on cultural resources.

Change 6. Provide guidance on intergovernmental review of agency actions that may affect State and local governments. (see paragraph 212).

Change 7. Provide procedures for adopting EAs prepared by other agencies (see paragraph 404d).

Change 8. Provide a new optional procedure for preparing scoping documents. The purpose of scoping is to identify the potential effects on the environment of the proposed action and set the temporal and geographic boundaries of the study. Depending on the nature and complexity of the action, some or all of the information needed during the scoping process may be obtained by letter, telephone, or other means. A scoping document would be extremely useful if the scoping is done by mail or telephone, or the project's location or locations are so remote, scattered, or widespread that affected agencies and other interested persons are unable to visit the site or sites. (see paragraph 505).

Change 9. Add a new procedure to paragraph 516, Revised or Supplemental Environmental Impact Statement (EIS). The FAA is proposing to add paragraph (d) that would include a procedure for circulating status sheets or supplemental environmental information, such as reports, on long-term or complex EISs to provide information that does not require preparation of a supplemental EIS. The responsible FAA official would notify EPA to ensure that the official log is accurate and to include this information as a separate section within the Notice of Availability (see EPA Filing system for Implementing the CEQ Regulations, 54 FR 9593, March 7, 1989).

Change 10. Provide a new procedure for integrating Clean Water Act section 404 permitting requirements and NEPA (see section 18, Appendix 1, Analysis of Environmental Impact Areas).

Change 11. Add new or amend existing categorical exclusions to the Categorical Exclusion List (Figure 3-2). Categorical exclusions are those types of Federal actions that meet the criteria contained in 40 CFR 1508.4 of the NEPA regulations promulgated by the Council on Environmental Quality. Categorical exclusions represent actions that, based on the FAA's past experience with similar actions, do not normally require an EA or EIS because they do not individually or cumulatively have a significant effect on the human environment, with the exception of extraordinary circumstances as set forth in paragraph 304. The proposed additions and changes represent the FAA's accumulated experience with assessment of the environmental consequences of the indicated action. Several of the proposed amendments to existing categorical exclusions are intended to add applicable actions of the Associate Administrator for Commercial Space Transportation.

The proposed new or amended categorical exclusions are as follows (the proposed new categorical exclusions and the proposed amendment of existing categorical exclusions are shown in *italics*):

(1) Administrative/General Actions:

(a) *Issuance of Notices to Airmen (NOTAMS), which notify pilots and other interested parties of interim or temporary conditions. (AFS, AVN)*

(b) *FAA actions related to conveyance of land for airport purposes, surplus property, and joint use arrangements that do not substantially change the operating environment of the airport. (APP, AND, ANI, and ASU)*

(c) *Mandatory actions required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant except when the United States has substantial discretion over implementation of such requirements.*

(d) *Agreements with foreign governments, foreign civil aviation authorities, international organizations, or U.S. Government departments calling for cooperative activities or the provision of technical assistance, advice, equipment, or services to those parties, and the implementation of such agreements; negotiations and agreements to establish and define bilateral aviation safety relationships with foreign governments, and the implementation of such agreements; attendance at international conferences and the meetings of international organizations, including participation in votes and other similar actions.*

(2) Certification Actions:

(a) *Approvals of aircraft or launch vehicles and engine repairs, parts, and alterations not affecting noise, emissions, or wastes. (All)*

(3) Equipment and Instrumentation Actions:

(a) *Construction of Remote Communications Outlet (RCO), or replacement with essentially similar facilities or equipment, to provide air-to-ground communication between pilots of general aviation aircraft and personnel in Flight Service Stations (FSS). (AAF, AND)*

(b) *Establishment, installation, upgrade, or relocation within the perimeter of an airport: airfield or approach lighting systems, such as Runway End Identifier Lights (REIL), Omnidirectional Airport Lighting Systems (ODALS), High Intensity Approach Lighting System With Flashers (ALSF-2); Medium Approach Lighting System with a REIL (MALSR/*

SALSR); visual approach aids, beacons, and electrical distribution systems, such as Visual Approach Slope Indicators (VASIs) and Precision Approach Path Indicators (PAPIs). (AAF, AND, APP, ANI)

(c) *Federal financial assistance or ALP approval or FAA installation of facilities and equipment, other than radars, within a facility or within the perimeter of an airport or launch facility (e.g. weather systems, navigational aids, and hygrometers). Weather systems include Automated Weather Observing System (AWOS), Automatic Surface Observation System (ASOS), Runway Visual Range (RVR), Low Level Wind Shear Alert System (LLWS), other essentially similar facilities and equipment that provides for modernization or enhancement of the service provided by these facilities. Navigational aids include Instrument Landing System (ILS) equipment or components of ILS equipment, other essentially similar facilities and equipment, and equipment that provides for modernization or enhancement of the service provided by that facility. (AAF, AUA, AND, APP)*

(d) *Federal financial assistance or ALP approval or FAA installation of radar facilities and equipment, within a facility or within the perimeter of an airport or launch facility, that conform to the current American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) guidelines for maximum permissible exposure to electromagnetic fields. Radar facilities and equipment include Terminal Doppler Weather Radar (TDWR), Next Generation Weather Radar (NEXRAD), Precision Runway Monitor (PRM), Airport Surface Detection Equipment (ASDE), Air Route Surveillance Radar (ARSR), Airport Surveillance Radar (ASR), Air Traffic Control Beacon (ATCB), and other essentially similar facilities and equipment. In addition, this includes equipment that provides for modernization or enhancement of the service provided by these facilities, such as Radar Bright Display Equipment (RBDE) with Plan View Displays (PVD), Direct Access Radar Channel (DARC), and a beacon system on an existing radar. (AAF, AUA, AND, APP)*

(e) *Replacement of power and control cables for facilities and equipment, such as airport lighting systems (ALS), launch facility lighting systems, airport surveillance radar (ASR), launch facility surveillance radar, Instrument Landing System (ILS), and Runway Visual Range (RVR). (AAF, AND)*

(f) *Acquisition of security equipment required by rule or regulation for the*

safety or security of personnel and property on the airport or launch facility (14 CFR part 107, Airport Security), safety equipment required by rule or regulation for certification of an airport (14 CFR part 139, Certification and Operation: Land Airports Serving Certain Air Carriers) or licensing of a launch facility, or snow removal equipment. (APP, AST)

(3) Facility Siting and Maintenance Actions:

(a) Federal financial assistance, Airport Layout Plan (ALP) approval, or FAA installation of de-icing/anti-icing facilities that comply with National Pollutant Discharge Elimination System (NPDES) permits or other permits protecting the quality of receiving waters, and for which related water detention or retention facilities are designed not to attract hazardous wildlife, as defined in FAA Advisory Circular 150-5200-33. (AAF, APP)

(b) Federal financial assistance, licensing, or Airport Layout Plan (ALP) approval to build or repair an existing runway, taxiway, apron, or loading ramp, including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, provided the action will not create environmental impacts outside of an airport or launch facility property. (APP, AST)

(c) Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA construction or limited expansion of accessory on-site structures, including storage buildings, garages, small parking areas, signs, fences, and other essentially similar minor airport development items. (AAF, AND, APP, AST)

(d) Construction of Remote Transmitter/Receiver (RT/R), or other essentially similar facilities and equipment, to supplement existing communications channels installed in the Air Traffic Control Tower (ATCT) or Flight Service Station (FSS). (AAF, AND)

(e) Federal financial assistance, licensing, or ALP approval for construction or limited expansion of facilities, such as terminal passenger handling facilities or cargo buildings, at existing commercial service airports and launch facilities that do not substantially expand those facilities. (All)

(f) Federal financial assistance, licensing, or FAA grading of land or removal of obstructions on airport or launch facility property, and erosion control measures having no impacts outside of airport property or outside of the launch facility. (AAF, AND, APP, AST)

(g) Construction and installation, on airports or launch facilities, of noise abatement measures, such as noise barriers to diminish aircraft and launch vehicle engine exhaust blast or noise, and installation of noise control materials. (All)

(h) Purchase, lease, or acquisition of three acres or less of land with associated easements and rights-of-way for new facilities. (ASU, AND, AAF)

(i) Federal financial assistance, Airport Layout Plan (ALP) approval, or licensing of a new heliport on an existing airport or launch facility that would not significantly increase noise over noise sensitive areas. (APP, AST)

(j) Repair or replacement of underground storage tanks (UST), or replacement of UST with above ground storage tanks at the same location. (AAF)

(k) Maintenance of existing roads and rights-of-way, including, for example, snow removal, landscape repair, and erosion control work. (All)

(l) Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA action related to topping or trimming trees to meet 14 CFR part 77 (Objects Affecting Navigable Airspace) standards for removing obstructions which can adversely affect navigable airspace. (All)

(m) Upgrading of building electrical systems or maintenance of existing facilities, such as painting, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas, and replacement of underground facilities. (AAF, AST)

(4) Procedural Actions:

(a) Actions to return all or part of special use airspace (SUA) to the National Airspace System (NAS) (such as revocation of airspace or a decrease in dimensions or times of use). (AAT)

(b) Designation of alert areas and controlled firing areas. (AAT)

(c) Establishment or modification of Special Use Airspace (SUA), (e.g., restricted areas, warning areas), and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level (AGL), or higher. (AAT)

(d) Establishment or modification of Special Use Airspace (SUA) for supersonic flying operations over land and above 30,000 feet mean sea level (MSL) or over water above 10,000 feet MSL and more than 15 nautical miles from land. (AAT)

(e) Establishment of Global Positioning System (GPS), Flight Management System (FMS), or essentially similar systems, that use overlay of existing procedures. (AAF, AAT, AFS, AVN, AST)

(f) Establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); instrument procedures conducted below 3,000 feet (AGL) that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved instrument procedures conducted below 3,000 feet (AGL) that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. For Air Traffic modifications to procedures at or above 3,000 feet (AGL), the Air Traffic Noise Screening Procedure (ATNS) should be applied. (AAT, AFS, AVN)

(g) Establishment of procedural actions dictated by emergency determinations. (AAT, AST)

(h) Publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. (AAT, AFS, AVN)

(i) A short-term change in air traffic control procedures, not to exceed six months, conducted under 3,000 feet above ground level (AGL) to accommodate airport construction. (AAT)

(j) Tests of air traffic departure or arrival procedures conducted under 3,000 feet above ground level (AGL), provided that: (1) the duration of the test does not exceed six months; (2) the test is requested by an airport or launch operator in response to mitigating noise concerns, or initiated by the FAA for safety or efficiency of proposed procedures; and (3) test data collected will be used to assess operational and noise impacts of the test.

(k) Approval under 14 CFR part 161 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. (APP)

(5) Regulatory Actions:

(a) Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking, and issuance of Final Rules) covering administrative or procedural requirements (not including Air Traffic procedures unless otherwise categorically excluded). (AFS, AGC)

Change 12. Add references to the use of demographic information of the geographic area of potentially significant impacts for purposes of anticipating and responding to public concerns about environmental justice and children. (see paragraph 201(b) and appendix 1, section 16).

Change 13. Add a new subject, "Supplemental Noise Guidance." to the Noise section of Appendix 1. Supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the yearly day/night average sound level (DNL) contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

Change 14. Add a new appendix 4, FAA Guidance on Third-Party Contracting, with a brief cross-reference in paragraph 204d. This proposed appendix would provide guidance on the use of third-party contractors in the preparation of NEPA documents consistent with 40 CFR 1506.5(c). Third-party contracting refers to the preparation of an EIS by a contractor selected by the FAA and under contract to, and paid for by, an applicant.

Change 15. Delete from the characteristics for extraordinary circumstances actions that are likely to be highly controversial with respect to the availability of adequate relocation housing. In FAA's experience, we are not aware of any EA's required by this circumstance alone. Rather, when this situation has occurred, it has been accompanied by other extraordinary circumstances. Therefore, the FAA believes this circumstance should be deleted from the list. (see Section 304).

Change 16. Clarify that the FAA follows the guidelines of the American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) for electromagnetic radiation. (see Appendix 1, Section 16)

In addition to requesting comments on the foregoing proposed changes, the FAA requests general comments on the potential usefulness of requiring NEPA documents to be prepared and submitted in electronic form suitable for access via the Internet.

The FAA encourages full public participation during this comment period. Comments submitted will be considered in preparing the final Order 1050.1E.

Issued in Washington, DC on September 30, 1999.

James D. Erickson,

Director, Office of Environment and Energy.

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Chapter 1. General

1. Purpose

This order provides Federal Aviation Administration (FAA) policy and procedures to ensure agency compliance with the requirements set forth in the Council on Environmental Quality (CEQ) regulations for implementing the provisions of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations (CFR) parts 1500–1508; Department of Transportation (DOT) Order DOT 5610.1C, Procedures for Considering Environmental Impacts; and other related statutes, and directives.

2. Distribution

This order is distributed to the division level in the Washington headquarters, regions, and centers with a limited distribution to all field offices and facilities.

3. Cancellation

Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, dated December 5, 1986, including Changes 1–4, is cancelled.

4. Background

NEPA and its implementing regulations, promulgated by CEQ in accordance with Executive Order (E.O.) 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991 (sections 2(g) and 3(h)), May 24, 1977, establish a broad national policy to protect the quality of the human environment, and provide policies and goals to ensure that environmental considerations are given careful attention and appropriate weight in all decisions of the Federal Government. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, sometimes called

“action-forcing” provisions (40 CFR 1500.1(a), 1500.3, and 1507) on how to implement the goals of NEPA. The major provisions include the requirement to use a systematic, interdisciplinary approach (section 102(2)(A)) and develop implementing methods and procedures (section 102(2)(B)). Section 102(2)(C) requires detailed analysis for proposed major Federal actions significantly affecting the quality of the human environment, providing authority to prepare environmental impact statements (EIS). Section 102(2)(E) provides authority for preparing environmental assessments (EAs). NEPA was enacted as Public Law (P.L.) 91–190 (January 1, 1970), which was amended by P.L. 94–52 (July 3, 1975), P.L. 94–83 (August 9, 1975), and P.L. 97–258, section 4(b) (Sept. 13, 1982), and codified at 42 United States Code (U.S.C.) 4231–4347. The CEQ implementing regulations are found at Title 40 of the Code of Federal Regulations (CFR), parts 1500–1508 (43 FR 55978, November 29, 1978; amended 51 FR 15618, April 25, 1986). DOT’s implementing requirements are prescribed under Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, October 1, 1979), and Order 5610.1, Changes 1 & 2 (July 13, 1982 and July 30, 1985)).

This order also addresses environmental laws, regulations, and executive orders in addition to NEPA. The environmental process established by this order is intended to implement the objective of the DOT and CEQ to use a single process to meet requirements for environmental studies, consultations, and reviews to the maximum extent possible.

5. Explanation of Changes

This order:

a. Reflects current environmental requirements.

b. Provides a procedure for program offices to adopt supplemental guidance in consultation with the Office of Environment and Energy (AEE) and the Office of Chief Counsel (AGC) (see paragraph 7).

c. Adds a reference in the paragraph on “Initial Review” (paragraph 201) and paragraph 15, Appendix 1, Analysis of Environmental Impact Areas, to the use of demographic information of the geographic area of potentially significant impacts for purposes of anticipating and responding to public concerns about environmental justice and children in accordance with E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations (59 FR 7629, February 16, 1994), the accompanying Presidential Memorandum, DOT Strategy on Environmental Justice (60 FR 33896, June 25, 1995), DOT Order 5610.2 (62 FR 18377, April 15, 1997), CEQ Environmental Justice: Guidance Under the National Environmental Policy Act (December 10, 1997), EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews (July 1999), E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), and 40 CFR 1501.2(c), 1507.2(d), and 1508.27(b)(2) (see paragraph 200c(4) and appendix 1, section 16).

d. Has been reorganized to place the categorical exclusions, including new and modified categorical exclusions, for all FAA programs in chapter 3, eliminating the separate appendixes for each program, including the Office of Airports and the Office of Commercial Space Transportation (see Figure 3–2, Categorical Exclusions List). For reference, offices that originated and would normally use a categorical exclusion are listed in parentheses following each categorical exclusion. Additions and modifications to categorical exclusions are identified in bold in figure 3–2.

e. Has been reorganized to place the types of actions that normally require preparation of EAs and EISs for all programs into Chapters 4 and 5, respectively. Appendix 6, Airports, of Order 1050.1D (which references FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985) is continued as appendix 3 of this order. Order 5050.4A will be updated to ensure consistency with this order in consultation with AEE (Environment and Energy Team, AEE–200) and AGC (Environmental Law Branch, AGC–620).

f. Provides guidance for the Office of Air Traffic to accept the U.S. Department of Defense’s (DOD) use of a categorical exclusion for actions relating to a request for designation of special use airspace when that request is subject to a categorical exclusion under the regulations of the requesting military department, except when FAA actions are subject to an EA, in accordance with a Memorandum of Understanding, dated January 26, 1998 (see paragraph 303c).

g. Adds a reference to Tribes in defining extraordinary circumstances when actions are likely to be highly controversial on environmental grounds based on concerns raised by a Federal, State, Tribal, or local government agency or by a substantial number of the persons affected by the action (see paragraph 304i); likely to violate Tribal

water quality standards under the Clean Water Act and Safe Drinking Water Act (see paragraph 304h), or air quality standards established under the Clean Air Act Amendments of 1990 (see paragraph 304g); or likely to be inconsistent with any Tribal law relating to environmental aspects of the proposed action. Includes new guidance on government-to-government consultation with Tribes, in accordance with Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, dated May 14, 1998 (63 FR 27655, May 19, 1998), and Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, dated April 29, 1994 (59 FR 22951, May 4, 1994) (see paragraph 212). Incorporates references to tribal consultation into appendix 1, section 11 on cultural resources, in accordance with regulations governing section 106 consultation under the National Historic Preservation Act (36 CFR part 800) and compliance with the Native American Graves Protection and Repatriation Act (43 CFR part 10), the American Indian Religious Freedom Act of 1978 (P.L. 95-341), and E.O. 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996).

h. Provides guidance on intergovernmental review of agency actions that may affect State and local governments, in accordance with Executive Order 12372, Intergovernmental Review of Federal programs (July 14, 1982), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities (see paragraph 210).

i. Provides guidance for determining when it may be useful to document that a project qualifies for categorical exclusion (see paragraph 305).

j. Provides procedures for adopting EAs prepared by other agencies (see paragraph 404d), as recommended by CEQ in its Memorandum: Guidance Regarding NEPA Regulations (48 FR 34263, July 28, 1983).

k. Provides a new optional procedure for joint documents that include both findings of no significant impact (FONSI) and decision documents (see paragraph 408).

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

m. Provides a new optional procedure for publishing records of decisions (RODs) in the **Federal Register** (see paragraph 512e).

n. Provides a new procedure for circulating supplemental environmental information, such as reports, for public comment on points of concern,

regarding environmental impacts set forth in an EIS (see paragraph 516d).

o. Provides a new procedure for integrating Clean Water Act section 404 permitting requirements and NEPA (see section 18, Appendix 1, Analysis of Environmental Impact Areas).

p. Provides revised appendices for analyses of environmental impact areas (appendix 1, replacing Attachment 2 of Change 4 of 1050.1D) and third-party contracting (appendix 4).

q. Provides new appendices containing: CEQ scoping guidance (appendix 5); CEQ's "40 Most Asked Questions" (appendix 9); and Order DOT 5610.2, Environmental Justice in Low-Income Populations and Minority Populations (appendix 10).

r. Deletes from the characteristics for extraordinary circumstances actions that are likely to be highly controversial with respect to the availability of adequate relocation housing. In FAA's experience, we are not aware of any EA's required by this circumstance alone. Rather, when this situation has occurred, it has been accompanied by other extraordinary circumstances. Therefore, the FAA believes this circumstance should be deleted from the list. (see Section 304).

s. Clarifies that the FAA follows the guidelines of the American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) for electromagnetic radiation. (see Appendix 1, Section 16)

t. This order adds the following new categorical exclusions, or modifies existing categorical exclusions previously provided in order 1050.ID: (changes are shown in *italics*)

(1) Administrative/General Actions

(a) *Issuance of Notices to Airmen (NOTAMS), which notify pilots and other interested parties of interim or temporary conditions. (AFS, AVN)*

(b) *FAA actions related to conveyance of land for airport purposes, surplus property, and joint use arrangements that do not substantially change the operating environment of the airport. (APP, AND, ANI, and ASU)*

(c) *Mandatory actions required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant except when the United States has substantial discretion over implementation of such requirements.*

(d) *Agreements with foreign governments, foreign civil aviation authorities, international organizations, or U.S. Government departments calling*

for cooperative activities or the provision of technical assistance, advice, equipment, or services to those parties, and the implementation of such agreements; negotiations and agreements to establish and define bilateral aviation safety relationships with foreign governments, and the implementation of such agreements; attendance at international conferences and the meetings of international organizations, including participation in votes and other similar actions.

(2) Certification Actions

(a) Approvals of aircraft *or launch vehicles* and engine repairs, parts, and alterations not affecting noise, emissions, or wastes. (All)

(3) Equipment and Instrumentation Actions

(a) Construction of Remote Communications Outlet (RCO), *or replacement with essentially similar facilities or equipment*, to provide air-to-ground communication between pilots of general aviation aircraft and personnel in Flight Service Stations (FSS). (AAF, AND)

(b) Establishment, installation, upgrade, or relocation within the perimeter of an airport: airfield or approach lighting systems, such as Runway End Identifier Lights (REIL), Omnidirectional Airport Lighting Systems (ODALS), *High Intensity Approach Lighting System With Flashers (ALSF-2); Medium Approach Lighting System with a REIL (MALSR/SALSR)*; visual approach aids, beacons, and electrical distribution systems, such as Visual Approach Slope Indicators (VASIs) and Precision Approach Path Indicators (PAPIs). (AAF, AND, APP, ANI)

(c) Federal financial assistance or ALP approval or FAA installation of facilities and equipment, other than radars, within a facility or within the perimeter of an airport *or launch facility* (e.g. weather systems, navigational aids, and hygrometers). Weather systems include Automated Weather Observing System (AWOS), Automatic Surface Observation System (ASOS), Runway Visual Range (RVR), Low Level Wind Shear Alert System (LLWAS), other essentially similar facilities and equipment that provides for modernization or enhancement of the service provided by these facilities. Navigational aids include Instrument Landing System (ILS) equipment or components of ILS equipment, other essentially similar facilities and equipment, and equipment that provides for modernization or

enhancement of the service provided by that facility. (AAF, AUA, AND, APP)

(d) Federal financial assistance or ALP approval or FAA installation of radar facilities and equipment, within a facility or within the perimeter of an airport or launch facility, that conform to the current American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) guidelines for maximum permissible exposure to electromagnetic fields. Radar facilities and equipment include Terminal Doppler Weather Radar (TDWR), Next Generation Weather Radar (NEXRAD), Precision Runway Monitor (PRM), Airport Surface Detection Equipment (ASDE), Air Route Surveillance Radar (ARSR), Airport Surveillance Radar (ASR), Air Traffic Control Beacon (ATCB), and other essentially similar facilities and equipment. In addition, this includes equipment that provides for modernization or enhancement of the service provided by these facilities, such as Radar Bright Display Equipment (RBDE) with Plan View Displays (PVD), Direct Access Radar Channel (DARC), and a beacon system on an existing radar. (AAF, AUA, AND, APP)

(e) Replacement of power and control cables for facilities and equipment, such as airport lighting systems (ALS), launch facility lighting systems, airport surveillance radar (ASR), launch facility surveillance radar, Instrument Landing System (ILS), and Runway Visual Range (RVR). (AAF, AND)

(f) Acquisition of security equipment required by rule or regulation for the safety or security of personnel and property on the airport or launch facility (14 CFR part 107, Airport Security), safety equipment required by rule or regulation for certification of an airport (14 CFR part 139, Certification and Operation: Land Airports Serving Certain Air Carriers) or licensing of a launch facility, or snow removal equipment. (APP, AST)

(3) Facility Siting and Maintenance Actions

(a) Federal financial assistance, Airport Layout Plan (ALP) approval, or FAA installation of de-icing/anti-icing facilities that comply with National Pollutant Discharge Elimination System (NPDES) permits or other permits protecting the quality of receiving waters, and for which related water detention or retention facilities are designed not to attract hazardous wildlife, as defined in FAA Advisory Circular 150-5200-33. (AAF, APP)

(b) Federal financial assistance, licensing, or Airport Layout Plan (ALP) approval to build or repair an existing

runway, taxiway, apron, or loading ramp, including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, provided the action will not create environmental impacts outside of an airport or launch facility property. (APP, AST)

(c) Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA construction or limited expansion of accessory on-site structures, including storage buildings, garages, small parking areas, signs, fences, and other essentially similar minor airport development items. (AAF, AND, APP, AST)

(d) Construction of Remote Transmitter/Receiver (RT/R), or other essentially similar facilities and equipment, to supplement existing communications channels installed in the Air Traffic Control Tower (ATCT) or Flight Service Station (FSS). (AAF, AND)

(e) Federal financial assistance, licensing, or ALP approval for construction or limited expansion of facilities, such as terminal passenger handling facilities or cargo buildings, at existing commercial service airports and launch facilities that do not substantially expand those facilities. (All)

(f) Federal financial assistance, licensing, or FAA grading of land or removal of obstructions on airport or launch facility property, and erosion control measures having no impacts outside of airport property or outside of the launch facility. (AAF, AND, APP, AST)

(g) Construction and installation, on airports or launch facilities, of noise abatement measures, such as noise barriers to diminish aircraft and launch vehicle engine exhaust blast or noise, and installation of noise control materials. (All)

(h) Purchase, lease, or acquisition of three acres or less of land with associated easements and rights-of-way for new facilities. (ASU, AND, AAF)

(i) Federal financial assistance, Airport Layout Plan (ALP) approval, or licensing of a new heliport on an existing airport or launch facility that would not significantly increase noise over noise sensitive areas. (APP, AST)

(j) Repair or replacement of underground storage tanks (UST), or replacement of UST with above ground storage tanks at the same location. (AAF)

(k) Maintenance of existing roads and rights-of-way, including, for example, snow removal, landscape repair, and erosion control work. (All)

(l) Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA action related to topping or trimming trees to meet 14 CFR part 77 (Objects Affecting Navigable Airspace) standards for removing obstructions which can adversely affect navigable airspace. (All)

(m) Upgrading of building electrical systems or maintenance of existing facilities, such as painting, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas, and replacement of underground facilities. (AAF, AST)

(4) Procedural Actions

(a) Actions to return all or part of special use airspace (SUA) to the National Airspace System (NAS) (such as revocation of airspace or a decrease in dimensions or times of use). (AAT)

(b) Designation of alert areas and controlled firing areas. (AAT)

(c) Establishment or modification of Special Use Airspace (SUA), (e.g., restricted areas, warning areas), and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level (AGL), or higher. (AAT)

(d) Establishment or modification of Special Use Airspace (SUA) for supersonic flying operations over land and above 30,000 feet mean sea level (MSL) or over water above 10,000 feet MSL and more than 15 nautical miles from land. (AAT)

(e) Establishment of Global Positioning System (GPS), Flight Management System (FMS), or essentially similar systems, that use overlay of existing procedures. (AAF, AAT, AFS, AVN, AST)

(f) Establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); instrument procedures conducted below 3,000 feet (AGL) that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved instrument procedures conducted below 3,000 feet (AGL) that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. For Air Traffic modifications to procedures at or above 3,000 feet (AGL), the Air Traffic Noise Screening Procedure (ATNS) should be applied. (AAT, AFS, AVN)

(g) Establishment of procedural actions dictated by emergency determinations. (AAT, AST)

(h) Publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change

concentration of aircraft on these tracks. (AAT, AFS, AVN)

(i) *A short-term change in air traffic control procedures, not to exceed six months, conducted under 3,000 feet above ground level (AGL) to accommodate airport construction.* (AAT)

(j) *Tests of air traffic departure or arrival procedures conducted under 3,000 feet above ground level (AGL), provided that: (1) the duration of the test does not exceed six months; (2) the test is requested by an airport or launch operator in response to mitigating noise concerns, or initiated by the FAA for safety or efficiency of proposed procedures; and (3) test data collected will be used to assess operational and noise impacts of the test.*

(k) *Approval under 14 CFR part 161 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.* (APP)

(5) Regulatory Actions

(a) *Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking, and issuance of Final Rules) covering administrative or procedural requirements (not including Air Traffic procedures unless otherwise categorically excluded).* (AFS, AGC)

6. Policy

a. The FAA will comply with both the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to FAA actions. This policy requires that the FAA decisionmaking process facilitate public understanding and scrutiny by including a consideration of the effect of a proposed action and its alternatives on the quality of the human environment, the avoidance or minimization of adverse effects of proposed actions, and the restoration or enhancement of resources and environmental quality of the nation. FAA will integrate NEPA and other environmental reviews and consultations into agency planning processes as early as possible.

b. The environmental review process outlined in this order shall be the focal point for assuring that NEPA and other environmental considerations are taken into account. EISs and EAs/FONSIs document FAA compliance with these considerations and shall reflect a thorough review of all relevant environmental issues, using a systematic, interdisciplinary approach.

c. Funding requirements will be justified and requested in accordance

with existing budgetary and fiscal policies. Each FAA program office is responsible for seeking sufficient funds through the budget process to implement provisions of this order.

7. More Detailed Guidance

a. This order sets forth policy and procedures for implementing NEPA. All FAA offices that have issued supplemental detailed guidance for implementing NEPA within their programs must update their orders within a reasonable time to be consistent with this revised order.

b. A program office may develop more detailed guidance to implement 40 CFR 1507.3 if it is consistent with CEQ regulations and this order.

(1) Development of More Detailed Guidance

The program office shall consult with AEE (Environment and Energy Team, AEE-200) and AGC (Environmental Law Branch, AGC-620) in developing its more detailed guidance, publish notice of availability for comment of its proposed more detailed guidance in the **Federal Register**, and take other steps to seek public input during the development of its more detailed guidance.

(2) Review

The program office shall submit its proposed more detailed guidance to AEE (Environment and Energy Team, AEE-200) and AGC (Environmental Law Branch, AGC-620) for a 60-day review period. If AEE-1 finds the more detailed guidance to be consistent with this order, after joint consultation with the AGC for legal sufficiency, AEE-200 shall notify the program office and the program office may adopt these as its final guidance.

(3) Notice

The program office shall notify the parties with which it has consulted and publish notice of its final more detailed guidance in the **Federal Register**.

8. Scope

a. The NEPA process addresses impacts of Federal actions on the human environment, such as noise, socioeconomic, land uses, air quality, and water quality. Chapter 2 of this order presents an overview of the NEPA process and generally applicable information. Depending upon the context and intensity of potential impacts, NEPA procedures differ in complexity and duration. Chapter 3 of this order addresses those types of FAA actions that do not normally require preparation of an EA or EIS, called

categorical exclusions (see figure 3-2), absent extraordinary circumstances (see paragraph 304). Chapters 4 and 5 of this order outline the processes for preparing EAs and EISs. These procedures apply to classes of FAA actions that may have a significant impact on the human environment. Appendix 1, Analysis of Environmental Impact Areas, presents, for each environmental impact category, brief descriptions of statutory and regulatory requirements and a list of agencies of specialized expertise or legal jurisdiction. Appendixes 3 and 4 provide additional FAA guidance on airports environmental review, and third-party contracting. Appendixes 5-10 provide copies of NEPA, CEQ regulations, CEQ guidance, DOT NEPA procedures, and the DOT order on environmental justice. Appendixes 11-12 provide a list of acronyms, an annotated list of generally applicable executive orders, DOT and FAA orders, memoranda of agreement or understanding, and related CEQ and FAA guidance.

9. Relation to CEQ Regulations

This order implements the mandate of NEPA, as defined and elaborated upon by CEQ's regulations, within the programs of the FAA. The order is not a substitute for the regulations promulgated by CEQ, rather, it supplements the CEQ regulations by applying them to FAA programs. Therefore, all program offices and administration offices shall comply with both the CEQ regulations and the provisions of this order.

10. Authority To Issue Changes to This Order

a. When the Administrator has not specifically reserved authority to make changes or updates, the Director of the Office of Environment and Energy (AEE-1) may issue changes or updates to this order, provided:

(1) When a change or update may affect an office or offices, AEE will formally coordinate with that office to afford it an opportunity to review and discuss the proposed change; and

(2) When a change or update is substantial, AEE will:

(a) formally coordinate with the Office of Chief Counsel (AGC), the Office of the Assistant Secretary for Transportation Policy (P-1) and the Office of the General Counsel (C-1), consult with CEQ; and then

(b) publish the proposed change or update in the **Federal Register** for public comment.

b. Each program office may submit to AEE proposed modifications to this order. For substantial changes, AEE

shall initiate formal coordination and consultation with AGC, P-1, C-1, and CEQ, after which the requesting office may continue the inter-divisional and interagency coordination and publish public notices and requests for comment in the **Federal Register**, provided it informs AEE of the proceedings. AEE may participate in the consultation at its option. The Associate or Assistant Administrator for the requesting office's program shall provide AEE with a memo describing the proposed change, a summary of the basis for the change, and, for substantial changes, comments from other program offices, AGC, P-1, C-1, CEQ, other Federal, State, Tribal, and local agencies and the public, as well as FAA's response. AEE will then issue change orders to this order, as needed. For substantial changes, AEE and the requesting office shall coordinate, to the extent possible, public notice in the **Federal Register** and internal clearance of proposed change orders. Alternatively, AEE may continue the coordination and public notice under subparagraph a, in cooperation with the requesting office.

11. Definitions

a. The terminology used in the CEQ regulations (see 40 CFR part 1508 in appendix 8) and Title 49 of the United States Code is applicable.

b. In addition, this paragraph defines basic NEPA and other terms as used throughout this order, as follows:

(1) Approving Official

This is the FAA official who has the authority to approve findings of no significant impact (FONSIs) or environmental impact statements (EISs) (see FAA Order 1100.154A, Delegation of Authority, June 1990, which provides delegation of authority to agency officials to sign environmental documents).

(2) Decisionmaker

This is the FAA official who has authority to approve a record of decision (ROD) or other types of formal decision documents for the agency (see FAA Order 1100.154A, Delegation of Authority, June 1990, which provides delegation of authority to agency officials to sign environmental documents).

(3) Environmental Due Diligence Audit (EDDA)

An EDDA is a detailed assessment of past property use with respect to storage, use, and disposal of hazardous materials. An EDDA is prepared using historical record searches, photographic interpretation, and site inspections to

determine the likelihood of environmental contamination prior to acquisition by, or transfer to or from, the FAA. Where an EDDA has been determined necessary by the FAA, it will be conducted prior to completing the NEPA document and will be incorporated by reference (see FAA Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, for further information on EDDAs).

(4) Environmental Studies

The investigation of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document. (see, e.g., 23 CFR 7.107(a)).

(5) Noise Sensitive Area

An area is noise sensitive if noise interferes with normal activities associated with its use. Noise sensitive areas are residential, educational, health, and religious structures and sites, and outdoor recreational, cultural, wildlife refuges, and historical sites. For example, in the context of noise from airplanes and helicopters, noise sensitive areas include such areas within the DNL 65 noise contour. Individual, isolated, residential structures may be considered compatible within the 65 DNL noise contour where the primary use of land is agricultural and adequate noise attenuation is provided. Also, transient residential use such as motels should be considered compatible within the 65 DNL noise contour where adequate noise attenuation is provided. A site that is unacceptable for outside use may be compatible for use inside of a structure, provided adequate noise attenuation features are built into that structure. (See section 4, table 1, on land use and section 14 on noise in appendix 1 and 14 CFR part 150, Airport Noise Planning, Land Use Compatibility Guidelines). In the context of launch vehicle operations, noise sensitive areas may include such sites within approximately 40 miles of the launch site for launches of very large rockets, whereas noise sensitive areas may include such sites within approximately 2 miles of the launch site for launches of small rockets. In the context of facilities and equipment, such as emergency generators or explosives firing ranges, but not including aircraft, noise sensitive areas may include such sites in the immediate vicinity of operations, pursuant to the Noise Control Act of 1972, (See State and local ordinances, which may be used as guidelines for evaluating noise impacts

from operation of such facilities and equipment.)

(6) Responsible FAA Official

This term refers to the FAA employee designated with overall responsibility to furnish guidance and participate in the preparation of NEPA documents, to evaluate the documents, and to take responsibility for the scope and content of the documents (see FAA Order 1100.154A, Delegation of Authority, June 1990, which provides delegation of authority to agency officials to sign environmental documents).

(7) Tribe

In general, the term "Tribe" refers to the recognized tribal government and tribal members (as determined by each tribe) of any tribe, band, nation, Pueblo, or other organized group or community, including any Alaska Native Village (as defined in, or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)) that is acknowledged by the Federal government to constitute a tribe with a government-to-government relationship with the United States and eligible for the programs, services and other relationships established by the United States for Indians because of their status as Indians and tribes. Under the Federally Recognized Indian Tribe List Act (P.L. 103-454, 25 U.S.C. 479a, note, to 479a-1), the Department of the Interior annually publishes a list of Federally recognized tribes in the **Federal Register**. The term "tribe" may also refer to State recognized tribes under specific authorities for certain DOT programs, especially related to surface transportation that may be associated with a particular FAA project.

12.-199. Reserved

Chapter 2. NEPA Planning and Integration

200. Introduction

a. By providing a means for assuring informed decisionmaking, NEPA compliance is an integral component of the FAA's comprehensive environmental responsibilities that enable FAA to carry out its primary mission of assuring aviation safety, security, and efficiency. NEPA provides a means for assuring that environmental concerns and interests of the public and other Federal, State, Tribal, or local agencies are appropriately considered as part of the decisionmaking process. NEPA also provides a means for efficiently complying with related statutes, orders, and regulations. Effective, efficient, and timely

environmental analyses, public involvement, and interagency and intergovernmental coordination depend upon determining the appropriate level of review early in planning, budgeting, and scheduling.

b. In accordance with NEPA, environmental issues shall be identified and considered early in an action's planning process, using a systematic, interdisciplinary approach and appropriate community involvement and interagency and intergovernmental coordination to expand the potential sources of information or identify areas of concern regarding the proposed action. Environmental permits and other forms of approval, concurrence, or consultation may be required, often from other agencies. Applicable permit application and other review processes should be included in the planning process to ensure that necessary supporting information is collected and provided to the permitting or reviewing agencies in a timely manner, especially if applicable laws, regulations, or executive orders specify timeframes for these processes.

c. By conducting the NEPA review at the earliest possible time in the planning and decisionmaking process, the responsible FAA official can use the NEPA process most effectively as an umbrella process or vehicle for giving appropriate consideration to specific environmental concerns by:

(1) Describing the purpose and need for the proposed action.

(2) Identifying reasonable alternatives (must include no action).

(3) Rigorously analyzing the reasonably foreseeable direct, indirect, and cumulative environmental impacts of those alternatives, and of nearby activities.

(4) Providing the basis for public disclosure and comment, and a mechanism for responding to public comments.

(5) Providing the basis for informed selection of the preferred alternative.

(6) Evaluating measures to mitigate adverse effects of the preferred alternative and ensuring that these measures are implemented.

(7) Facilitating compliance with applicable environmental laws, regulations, and executive orders.

d. This chapter guides the responsible FAA official, approving official, and decisionmaker in starting the NEPA process by determining the following:

(1) Whether an action requires an EA or an EIS.

(2) Whether the FAA is the lead Federal agency for the NEPA process.

(3) Which FAA office is responsible for NEPA compliance, including

preparing environmental analyses and documents, ensuring public involvement, and completing interagency and intergovernmental coordination and consultation

201. Initial Review

a. The responsible FAA official should initially review whether the proposed action:

(1) could significantly affect the quality of the human environment, for example, with respect to noise, land, air quality, water quality, wildlife, energy supply and natural resources, or historic or archeological resources;

(2) would be located in wetlands, floodplains, coastal zones, prime, unique or state or local important farmlands, habitat of Federally listed endangered or threatened species or affected wildlife, wild and scenic river areas, or areas protected under DOT section 4(f); or

(3) would be highly controversial on environmental grounds (40 CFR 1508.27(b)(4)).

b. Based on the initial environmental review, the responsible FAA official shall identify issues and problems having potentially significant environmental impacts. Further, the responsible FAA official shall determine whether such issues and problems, as they pertain to the proposed action, have been previously addressed in a broad system, program, or regional assessment (see paragraphs on tiering in chapters 3 and 4). Consideration should be given to the existence of minority populations, low-income populations, and children in the geographic area of potentially significant impacts. The responsible FAA official can then decide which type of analysis and documentation, and what extent of public involvement and interagency and intergovernmental coordination and consultation, are appropriate.

c. When appropriate, the responsible FAA official should provide pertinent information to the affected community and agencies and consider their opinions at the earliest formative stage of the action and early in the process of preparing NEPA documentation. The extent of early coordination will depend on the complexity, sensitivity, degree of Federal involvement, and anticipated environmental impacts of the proposed action. Comments received during early coordination on environmental impacts of proposed actions shall be considered, as appropriate, in determining whether an EA, FONSI, or EIS is required (see also paragraph 207 on lead and cooperating agencies, paragraph 208 on public involvement, paragraph 209 on plain language and geographic

information, paragraph 210 on reducing paperwork, paragraph 211 on reducing delay, paragraph 212 on interagency and intergovernmental coordination, and appendix 1 on specific requirements for interagency coordination and consultation and public notice and comment under other environmental laws, regulations, and executive orders.)

202. Determination of Federal Actions Requiring Preparation of an EA or an EIS

The three major levels of NEPA review are categorical exclusions and extraordinary circumstances, environmental assessments (EA), and environmental impact statements (EIS).

a. The first analytical step is to determine whether the proposed action is an advisory action, an emergency action, or a categorical exclusion. If an action is advisory, it is not subject to NEPA review. If an action is an emergency action, and not categorically excluded, then the provisions in Chapter 3, Advisory and Emergency Actions and Categorical Exclusions, for implementing NEPA in the context of an emergency apply. If an action is included in one of the categories in Figure 3-2, Categorical Exclusion List, and no extraordinary circumstances (see paragraph 304) apply to the proposed action, the FAA can take action without further environmental review. (See appendix 1 for associated findings and determinations which may need to be made, and, in certain situations, in consultation with relevant oversight agencies, under special purpose statutes, regulations, and executive orders.)

b. For proposed actions subject to NEPA that do not qualify for categorical exclusion, an EA or an EIS is required. The purpose of an EA is to inform decisionmaking generally or to determine whether a proposed action or its alternatives has the potential to significantly affect the environment. If the FAA has decided to prepare an EIS, it does not need to prepare an EA. If the EA indicates no significant impacts from the proposed action, a FONSI is prepared. The FONSI is a determination that the action lacks potentially significant environmental impacts and does not represent the agency's decision to implement the proposed action. The FONSI may be incorporated, along with other required findings, a description of the proposed action, the place and time of implementation, and the point of contact for additional information, into the agency's decision document, sometimes called a Record of Decision or FONSI/ROD. A formal decision document after a FONSI is optional

because the agency's decision to act may be evidenced by other documents such as rules, licenses, or approvals. The FONSI and other findings, however, must be documented in the project file.

c. For proposed actions that include mitigation measures to avoid, eliminate, or reduce anticipated significant impacts below applicable significance thresholds, a FONSI must be prepared and include appropriate mitigation commitments. A formal decision document after a FONSI is issued, sometimes called a Record of Decision or FONSI/ROD, is optional because the agency's decision to act may be evidenced by other documents such as rules, licenses, or approvals. The FONSI with the appropriate mitigation commitments, and other required findings, however, must be documented in the project file.

d. If the EA indicates that potentially significant environmental impacts may result from the proposed action, an EIS is required to proceed. An EIS provides additional, detailed evaluations of the proposed action and its alternatives, including the No Action alternative. Where the FAA anticipates that significant effects would result, a decision can be made to prepare an EIS without first developing an EA. No sooner than 30 days after the final EIS has been prepared and the FAA approving official has approved the document, the responsible FAA official may prepare a ROD for the signature of the appropriate decisionmaker. The ROD presents the agency's official decision on the proposed action and identifies any mitigation and monitoring measures.

e. When an application or request is received that requires FAA approval or implementation, environmental analysis may be required. The responsible FAA official may require the applicant or other interested parties to provide sufficient environmental information or analysis to ensure the environmental analysis meets the requirements of this order. In such cases, the responsible FAA official will recommend deferring final action pending receipt of the necessary information or environmental studies from the applicant. Upon receipt of the additional information or environmental studies, the responsible FAA official will determine if the information is sufficient to proceed. FAA may request that the applicant prepare the EA.

203. Responsibilities of the FAA and Applicants

a. The provisions of this order and the CEQ regulations apply to actions directly undertaken by the FAA and

where the FAA has sufficient control and responsibility to condition the license or project approval of a non-Federal entity.

b. Where actions are directly undertaken by FAA, the FAA may prepare EAs and EISs, or use contractors in accordance with paragraph 204a.

c. Applicants may prepare EAs. In all other cases, the role of the applicant is limited to providing environmental studies and information. Applicants may fund the preparation of EISs through third-party contracting (see paragraph 204 and appendix 4).

d. For projects directly undertaken by Federal agencies and requiring an EIS, the statement shall be prepared at the feasibility analysis stage, and may be supplemented at a later stage. For applications to the FAA requiring an EA or EIS, the EA or EIS shall be commenced no later than immediately after the application is received.

204. Use of Contractors

a. Contractor consulting services may be used to prepare EAs and EISs. Contractors also may be used to prepare background or supplemental material and otherwise assist in preparing draft or final environmental documents for which the FAA takes responsibility. When contractors prepare EAs and EISs for the FAA, they must comply with the provisions of this order.

b. The responsible FAA official has overall responsibility for furnishing guidance on, participating in the preparation of, and independently evaluating the environmental document, taking responsibility for scope and content, including computer modeling. Duties of the responsible FAA official may be delegated typically to an environmental specialist, including the authority to sign FONSIs, but not the authority to approve EISs. The agency official authorized to approve FONSIs and EISs is called the approving official. The agency official authorized to approve a record of decision (ROD) based on review of an EIS and formal decision documents to proceed with the action based on review of the EA/FONSI is called the decisionmaker. (See paragraph 11, Definitions.)

c. In some circumstances, a procurement request may be needed to obtain consultant services to perform environmental analyses. FAA procurements for an EA and final design work must be separate to avoid a conflict of interest; however, an EA and preliminary design work may be combined provided the design work is of a generic nature, i.e., not site specific.

d. When an EIS is required, the lead Federal agency is required to select the

contractor, who will assist the lead agency in preparing the EIS. (See 40 CFR 1506.5(c) and Appendix 4, FAA Guidance on Third-Party Contracting). If these procedures are not followed in preparing an EA, and the EA results in a decision to prepare an EIS, delay may occur, associated with selecting the contractor in accordance with this paragraph and appendix 4.

e. When a contractor prepares an EIS, the FAA requires the contractor to execute a disclosure statement prepared by the lead agency, or when appropriate, by the cooperating agency (for its portion of the EIS), specifying that the contractor has no financial or other interest in the outcome of the action (see 40 CFR 1506.5(c)).

205. Applicability

This order is effective immediately upon signature, with the following exception. This order does not apply to decisions made and final environmental documents issued prior to the effective date of this order.

206. Special Instructions

For actions subject to NEPA, the responsible FAA official should not take any action or make any irretrievable and irreversible commitments of resources until appropriate environmental review has been completed that meets the requirements of this order (see 40 CFR 1502.2(f) and 1502.4(c)(3)).

a. Requirements that apply to EISs may also be considered in preparing EAs.

b. Land acquisition and facility construction.

(1) Unless the acquisition of land is inextricable from the proposed project, that is, part of one continuous project leading inevitably and inexorably to the proposed Federal action, transfer of title or other interests in real property, including land, is not a major Federal action significantly impacting the environment or an irretrievable commitment of resources under NEPA. In some situations, it may not be appropriate to begin negotiations for the land acquisition before completing the environmental impact analysis and documentation. In other situations, it may not be possible to obtain some necessary information to complete the environmental review until after the property has been acquired, in which case, the responsible FAA official must decide whether to proceed with the property acquisition contingent upon obtaining the necessary information, and at the risk of FAA not approving a decision to proceed with the proposed action at the particular site.

(2) The responsible FAA official will review a proposed action by an applicant that has acquired land or constructed a facility for operation by FAA, but without prior approval by FAA, to determine whether the action was consistent with the policies of this order and has not limited full and objective consideration of alternatives.

c. The responsible FAA official will give particular attention to its responsibilities under DOT section 4(f) to insure that a special effort is made to preserve the natural beauty of countryside, public parks, and recreation lands, wildlife and waterfowl refuges, wild and scenic rivers or study rivers, and historic sites. FAA will not approve actions requiring the use of DOT section 4(f) properties unless there is no feasible and prudent alternative and the program includes all possible planning to minimize harm.

d. The responsible FAA official also will give particular attention to actions involving properties included in or eligible for inclusion in the National Register of Historic Places and the provisions of Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970.

207. Role of Lead and Cooperating Agencies

Section 1501.5 of the CEQ regulations describes the role of the lead agency in preparing EISs when more than one agency is involved in a proposed action. Section 1501.6 describes the relationship of the lead agency with cooperating agencies. Sections 1501.7 and 1501.8 describe the role of the lead agency in the scoping process and in setting time limits.

a. Lead agencies may ask Federal agencies with special expertise or jurisdiction by law to be cooperating agencies.

b. The definition of a cooperating agency in 40 CFR 1508.5 also includes any "State or local agency of similar qualifications [i.e., with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal] or, when the effects are on a reservation, a Native American Tribe, may by agreement with the lead agency become a cooperating agency." For further guidance, see CEQ Memorandum on Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (July 28, 1999).

c. See also Memorandum of Understanding Between the FAA and the Department of Defense (November

1989) regarding NEPA compliance for special use airspace designations, available from the Environmental Programs Division of the FAA Office of Air Traffic Airspace Management, and Memorandum of Agreement Among Department of Defense, Federal Aviation Administration and National Aeronautics and Space Administration on Federal Interaction with Launch Site Operators (August 21, 1997), available from the Space Systems Development Division of the FAA Office for Commercial Space Transportation.

208. Public Involvement

a. Public involvement shall be initiated as early as possible and continued throughout the development of the proposed action in accordance with the FAA Community Involvement Policy Statement, dated April 17, 1995, and 40 CFR 1500.2(d) to obtain meaningful public input (see also paragraph 201c). Public involvement may be appropriate in defining the scope of work of a NEPA document developed by the FAA or the consultant the FAA selects. It may also be appropriate in defining the scope of work for an EA to be prepared by an applicant for grants-in-aid or an FAA approval or license. Comments from individuals and groups will be considered, as appropriate, in preparing an EA and FONSI or EIS. A summary of public involvement and the environmental issues raised shall be documented in the EA or EIS. Additional information on public involvement can be found in FAA's "Community Involvement Manual," FAA-EE-90-03 (August 1990), and Community Involvement Policy Statement (April 1995), which may be obtained from the Office of Environment and Energy, and 40 CFR 1506.6. Other laws, regulations, and executive orders have specific requirements for public involvement, including but not limited to during rulemaking affecting children's environmental health risks under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, dated April 21, 1997 (62 FR 19885, April 23, 1997). See also recommendations for public involvement, including documentation of public involvement activities, related to implementing E.O. 12898 on environmental justice and the accompanying Presidential Memorandum of February 11, 1994 can be found in the Department of Transportation Strategy on Environmental Justice (60 FR 33896, June 25, 1995), Order DOT 5610.2, Environmental Justice in Minority Populations and Low-Income

Populations (62 FR 18377, April 15, 1997), EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews (July 1999), and CEQ Environmental Justice: Guidance Under the National Environmental Policy Act (December 10, 1997).

b. The responsible FAA official shall:

- (1) Make efforts to solicit from and provide appropriate information to the public.

- (2) Inform those persons and agencies who may be interested or affected by providing full and fair discussion of environmental effects.

- (3) Provide timely public notice of scoping meetings, public hearings, workshops, and availability of environmental documents (e.g., NOI (Notice of Intent) to prepare and Notice of Availability of environmental documents).

c. If permits, licenses, or other forms of review and approval requiring public involvement are applicable, such as under sections 106 and 110 of the National Historic Preservation Act, section 7 of the Endangered Species Act, section 404 of the Clean Water Act, E.O. 11988, Wetlands, E.O. 11990, Floodplains, section 176(c) of the Clean Air Act, and other air, water, and solid waste permits, and clean-up activities under the Comprehensive Environmental Response, Compensation, and Liability Act, then the responsible FAA official is encouraged to work cooperatively with the other agencies to combine public involvement activities and documents wherever possible and appropriate to integrate the NEPA and applicable permitting and other review processes in accordance with 40 CFR 1500.2(c), 1500.4(k) and (n), and 1500.5.

d. Public hearings. Hearings are lead by a public hearing officer. Agency staff help disseminate information, particularly when a public hearing is combined with an open house. For additional information about the public hearings and meetings, consult with the Office of Environment and Energy. See also, chapter 6 of FAA's Community Involvement Manual (August 1990) and chapter 2 of DOT and the Federal Highway Administration's (FHWA) Public Involvement Techniques for Transportation Decision-making (September 1996).

(1) The following elements are to be considered in deciding whether a public hearing is appropriate in cases where it is not statutorily mandated.

- (a) The magnitude of the proposed action in terms of environmental impact or controversy, economic costs, the size and location of the geographic area

involved, and the uniqueness or amount of the resources to be committed.

(b) The degree of interest in the proposed action, as evidenced by requests from the public of Federal, Tribal, State, and local authorities that a public hearing be held.

(c) The complexity of the issues and the likelihood that information presented at the hearing will be of assistance to the agency in fulfilling its responsibilities.

(d) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, or written comments on the proposed action.

(2) The following shall be included in the notice for a public hearing:

(a) A description of the proposed action.

(b) The scheduling of the public hearing (time, date, and place).

(c) The availability and location of a DEIS, FONSI, or EA.

(3) Notice of the public hearing shall be in an areawide or local newspaper of general circulation. CEQ section 1506.6 states that, "In all cases the agency shall mail notice to those who have requested it on an individual action. In the case of an action with effects of national concern notice shall include publication in the **Federal Register** and notice by mail to national organizations reasonably expected to be interested in the matter * * *."

(4) A draft EIS, FONSI, or EA shall be available to the public at least 30 days prior to the public hearing.

(5) For FAA hearings, the responsible official may assign program officers the responsibility for convening a hearing and serving as hearing officer.

(6) Records of public hearings will be maintained in the docket of the Chief Counsel's office.

209. Plain Language and Geographic Information

40 CFR 1500.4(d), 1502.1, 1502.2(c), and 1502.8, Order DOT 5610.1C, paragraph 14, and the Executive Orders on environmental justice and intergovernmental consultation encourage the availability of information to the public in a manner that will facilitate public involvement in decisions affecting the human environment. The following executive orders also apply:

a. Executive Order 12906, Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure, April 11, 1994, requires studies and geospatial data collected in the course of preparing an EA or EIS to conform to quality

standards established through the intergovernmental coordinating mechanism provided for in the executive order, and chaired by the Federal Geographic Data Committee. For additional information, contact the Office of Environment and Energy.

b. Executive Order 12866, Regulatory Planning Review, and the Presidential Memorandum on Plain Language in Government Writing, dated June 10, 1998 (63 FR 31885, June 10, 1998), requires all Federal agencies to use plain language in all proposed and final rulemaking documents published in the **Federal Register** and in government documents generally.

210. Reducing Paperwork

The CEQ regulations (40 CFR 1500.4) encourage the reduction of paperwork while still demonstrating in the administrative record that the agency has met the requirements of NEPA and other applicable environmental laws, regulations, and executive orders.

a. The responsible FAA official should integrate NEPA requirements and other applicable environmental reviews and consultation requirements (40 CFR 1500.4(k)).

b. The responsible FAA official should refer to appendixes 1 and 12 for an overview of analyses required under other applicable environmental laws, regulations, and executive orders.

c. CEQ regulations also encourage joint preparation of NEPA documents so that each agency may adopt appropriate documents prepared by another agency (40 CFR 1506.3).

d. Relevant information may be incorporated by reference if the effect will be to reduce bulk without hindering agency and public review. The information must be briefly described, properly cited, and reasonably available for inspection by potentially interested persons within the time allowed for comment. (See 40 CFR 1502.21).

211. Reducing Delay

CEQ regulations encourage the reduction of delay while allowing for public involvement and interagency and intergovernmental consultation.

a. To reduce delay, the responsible FAA official should integrate NEPA requirements, and those of associated permitting and review processes, with the agency's planning and decisionmaking process for the project as early as possible.

b. The responsible FAA official should, where appropriate, use tiering for EISs (40 CFR 1502.20):

(1) A broad or programmatic impact statement may be used to consider similar actions.

(2) A phased approach may be used to focus on issues ripe for decision at each level of environmental review, while summarizing previously discussed issues and disclosing reasonably foreseeable actions. Tiering may also be used in preparing EAs.

c. The responsible FAA official should refer to appendixes 1 and 12 for an overview of requirements under other applicable environmental laws, regulations, and executive orders, identify the information and time required by the oversight agencies to complete their review and, where applicable, jointly prepare or adopt the FAA's EA or EIS to meet their own NEPA requirements (see 40 CFR 1500.5(g) and (h) and 1506.2)).

d. The responsible FAA official should identify any need for additional studies or documentation.

212. Intergovernmental and Interagency Coordination and Consultation

a. The responsible FAA official should consult affected local units of government, and pertinent Federal, State agencies, and Tribal governments early in the NEPA process (see also paragraph 201c). Comments on the environmental impacts of the proposed action shall be considered, as appropriate, in determining whether the proposed action requires an EA/FONSI or EIS and in preparing the EA/FONSI or EIS. See specific requirements for coordination and consultation, which may apply under other environmental laws, regulations, and executive orders. Environmental permits and other forms of approval, concurrence, or consultation may be required from other agencies. Applicable permit application and other review processes should be included in the planning process to ensure that the necessary supporting information is collected and provided to the permitting or reviewing agencies in a timely manner, especially if the applicable laws, regulations, or executive orders specify timeframes for these processes.

b. The following executive orders also apply generally:

(1) State and Local Governments

In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, dated July 14, 1982 (as supplemented by Executive Order 13132, Federalism, dated August 4, 1999 (64 FR 43255, August 10, 1999)), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities, the responsible FAA official shall

provide the opportunity for State and local officials to review and comment on Federal actions for Federal assistance or actions affecting them. A few States have established a point of contact, often within the governor's office, to coordinate comments by State agencies. Otherwise, the responsible FAA official should contact appropriate State agencies directly. Please refer to the Council of State Governments' directories and webpage (www.statesnews.org, which, as currently organized, includes under "other resources" links to "State pages") to identify appropriate State agencies. See also specific requirements for consultation with State and local governments in Appendix 1, Analysis of Environmental Impact Areas.

(2) Tribal Governments

In accordance with Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, May 14, 1998 (63 FR 27655, May 19, 1998), the responsible FAA official must consult in a timely and meaningful manner with Tribal governments in formulating policies, including regulatory policies, significantly or uniquely affecting tribal governments and be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for Tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian Tribal governments. The Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, dated April 29, 1994 (59 FR 22951, May 4, 1994), outlines principles for government-to-government consultation with Indian Tribal governments. The Office of Management and Budget's Memoranda M-95-09 (March 31, 1995) and M-95-20 (September 21, 1995) provide additional information on principles of government-to-government consultation. Consultation should be initiated with the recognized leader of the Tribal government and by the appropriate agency official and advice sought on how to proceed with consultation based on tribal culture and organization. See also specific requirements for consultation with tribal governments in Appendix 1, Analysis of Environmental Impact Areas. Sources of information for addresses to contact Tribal governments include, for example, Tiller's Guide to Indian Country (1996: BowArrow Publishing Company, Albuquerque, New Mexico), State Historic

Preservation Offices, the Bureau of Indian Affairs, and the FAA Federal Historic Preservation Officer.

(3) Foreign Governments

In accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979 (44 FR 18722, March 29, 1979), specific treaties, and DOT Order 5610.1C, paragraph 16, the responsible FAA official should consult with the Office of Environment and Energy and P-1, to initiate consultation with foreign governments for proposed actions outside the United States, its territories, and possessions that have the potential to significantly affect the global commons or the environment of other nations.

c. The responsible FAA official should refer to relevant interagency memoranda of agreement and understanding. (See also Appendix 1, Analysis of Environmental Impact Areas; Appendix 12, Related Executive Orders, DOT & FAA Orders, and Memoranda/Guidance; and contact the Environment, Energy and Employee Safety Division (AEE-200) or the Environmental Branch (AGC-620) of the Office of Chief Counsel for information on the status of this and other interagency memoranda).

d. Various laws, regulations, executive orders, and departmental orders establish interagency coordinating mechanisms, *e.g.*, related to invasive species, coral reefs, and children's environmental health risks. The responsible FAA official should review Appendix 1, Analysis of Environmental Impact Areas, and contact the Environment, Energy and Employee Safety Division (AEE-200) or the Environmental Branch (AGC-620) of the Office of Chief Counsel for more specific information.

e. In accordance with 40 CFR 1503.2, when FAA is invited to comment or is a cooperating agency because it has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards, the responsible FAA official shall, if it is satisfied that its views are adequately reflected in the environmental document, reply that it has no comment. If the responsible FAA official or the Office of Environment and Energy prepares comments, the comments should be as timely and specific as possible, indicating what additional information it needs to fulfill other applicable environmental reviews or consultation requirements, and, if it objects or expresses a reservation about the proposed action based on potential

environmental impacts, what mitigation measures it considers necessary to allow the program office to grant or approve applicable permit, license, or related requirements or concurrences.

213. Roles and Responsibilities

The roles and responsibilities of the offices, services, regions, and centers in the FAA for complying with this order are described below. Responsibilities may be delegated in accordance with appropriate FAA orders, such as Order 1100.154A, Delegations of Authority.

a. Assistant Administrator for Region and Center Operations (ARC) is responsible for overseeing Regional Administrators and the Director of the Mike Monroney Aeronautical Center, or designee, who are responsible for coordinating cross-divisional and cross-regional environmental matters and for overseeing regional environmental activities.

b. Associate Administrator for Airports (ARP) is responsible for considering the environmental impacts of proposed FAA approvals of airport layout plans and FAA-funded airport actions to assure compliance with NEPA requirements and other Federal and Departmental environmental laws, regulations, and orders. Airports personnel shall comply with the NEPA requirements in the most current versions of FAA Order 5050.4. ARP's Office of Airport Planning and Programming, Community and Environmental Needs Division, APP-600, provides guidance to Regional and District Airports personnel concerning Federal, Departmental, and agency environmental policy regarding airport development actions.

c. Assistant Administrator for Policy, Planning, and International Aviation (API) is responsible for providing policy guidance to the agency on implementing a wide range of environmental laws and regulations. The Office of Environment and Energy (AEE) provides policy oversight on FAA environmental actions; issues regulations for aircraft noise and emissions under 14 CFR parts 34 and 36; provides assistance as necessary in developing guidelines and procedures for FAA program areas; serves as the designated FAA NEPA liaison in accordance with 40 CFR 1507.2 "to be responsible for overall review of agency NEPA compliance" and Federal Preservation Officer in accordance with section 110 of the National Historic Preservation Act; interprets policies established in this order; provides assistance with computerized environmental tools, such as the "Integrated Noise Modeling" (INM) for aircraft noise and the

"Emissions Dispersion Modeling System" (EDMS) for air quality; and provides advice to and supplements NEPA training programs in cooperation with the Office of Learning and Development and other applicable organizational elements.

d. Office of the Chief Counsel (AGC) is responsible for providing legal advice on NEPA compliance and legal requirements. AGC reviews section 4(f) on FEIS's; counsels and assists headquarters staff in accomplishing FAA environmental actions, and advises on the legal sufficiency of environmental documents. Regional Counsel and Center Counsel are responsible for providing legal counsel, assistance, and review in the conduct of regional environmental activities related to FAA environmental actions and in advising on the legal sufficiency of regional and center environmental documents.

e. Associate Administrator for Air Traffic Services (ATS) is responsible for evaluating the environmental impacts for all actions arising out of ATS responsibilities that require NEPA compliance.

(1) Air Traffic Service (AAT) is responsible for ensuring that the appropriate NEPA documentation is prepared for all air traffic actions originating in their region. The division manager or designee ensures that the depth of environmental study appropriate for a proposed action has been determined, and that the required documentation is prepared in a complete and timely manner. AAT's headquarters office, which originates a proposed system-wide action, is responsible for preparing the associated EA, FONSI, EIS, or ROD. Input may be requested from regional offices and field facilities for an action originating within headquarters.

(2) Airway Facilities Service (AAF) is responsible for considering the environmental impacts of the acquisition, management, and disposition of facilities and equipment (F&E). These are usually of local nature in the region. The regional division manager is responsible for site-specific NEPA processing and preparing documents for modifying, expanding, or upgrading existing facilities and supporting land acquisition and construction design documents that are required by the regional Logistics Division (also see paragraph 210g(1) below). In addition, Airway Facilities Service is responsible for being the agency's program manager for non-Federal facility actions (see 14 CFR part 171, Non-Federal Navigation Facilities). An example of such an action is a

request from a non-Federal sponsor to change a VOR procedure.

(3) Aviation System Standards (AVN) is responsible for complying with FAA requirements under the aircraft program and maintenance of agency aircraft. The National Flight Procedures Office or designee is responsible for ensuring that environmental factors are considered for all its instrument procedures that require NEPA compliance.

f. Associate Administrator for Commercial Space Transportation (AST) is responsible for considering the environmental impacts of commercial launch activities. The FAA is authorized to regulate and license U.S. commercial launch and re-entry activities and as such, AST is responsible for ensuring that launch services provided by private enterprises are consistent with national security and foreign policy interests of the United States and do not jeopardize public safety and the safety of property. AST's authority extends to licensing of commercial launch vehicles (LVs) and is considered to be a major Federal action subject to NEPA requirements. Launch and re-entry licenses also identify the requirement for the proper oversight and control of launch activities. AST issues launch and re-entry specific and launch and re-entry site operators licenses.

g. Associate Administrator for Regulation and Certification (AVR) is responsible for ensuring that environmental factors are considered for all actions arising out of AVR responsibilities that require NEPA compliance.

(1) The preparation of required environmental analysis within AVR is delegated, as appropriate, to the Flight Standards Service, Aircraft Certification Service, regional Flight Standards Service division managers, and Aircraft Certification Directorate managers.

(2) Normally, the district or field office responsible for the action is responsible for the environmental assessment (EA). Regional division managers and staff will assist and monitor district and field offices activities in the preparation of EAs. Regional Flight Standards division managers and directorate managers are responsible for coordination of actions involving environmental documents which cross organizational lines within AVR and with other FAA organizations. The headquarters divisions, with assistance from the regions, will develop and coordinate findings of no significant impact (FONSI).

(3) Documentation, including the analysis of environmental factors, shall be retained in the project folder to substantiate the EA.

(4) An EA or EIS pertaining to a regulatory action shall be prepared for the signature of the appropriate Service Director. Prior coordination and concurrence is required from the Office of the Chief Counsel (AGC) and the Office of Rulemaking (ARM), for any EA or EIS pertaining to a regulatory action.

h. Associate Administrator for Research and Acquisitions (ARA) is responsible for ensuring that environmental factors are considered for all actions arising out of ARA responsibilities that require NEPA compliance.

(1) Office of Communications, Navigation, and Surveillance Systems (AND) is responsible for preparing EAs or EISs for broad actions (programmatic EAs or EISs) to consider the environmental impacts of fielding systems. AND preparation of programmatic EISs is selective and will be decided on a program-by-program basis. Subsequent, related site-specific environmental documents may tier upon these EISs. Regional Airway Facilities divisions are responsible for site-specific NEPA processing and preparing documents for modifying, expanding, or upgrading existing facilities. AND will provide guidance and oversight. Regional Airway Facilities Divisions are usually responsible for processing and preparing all site-specific NEPA documents for new systems; however, upon agreement, AND will share this responsibility.

(2) Office of Acquisitions (ASU) is responsible for considering environmental impacts of policy and procedures for the acquisition, management, and disposal of land. The regional Logistics Division is responsible for ensuring that construction contracts, acquisitions, disposal of lands, or other real property interests do not commence until all agency environmental requirements have been completed.

(3) Office of System Architecture and Investment Analysis (ASD) is responsible for considering environmental impacts of establishing procedures for the National Airspace System (NAS) programs, facilities (e.g., Airport Traffic Control Towers (ATCT), Terminal Radar Approach Controls (TRACON), Air Route Traffic Control Centers (ARTCC), Flight Service Stations (FSS), remote unmanned facilities, depots), and research/development activities.

(4) Director of the William J. Hughes Technical Center (ACT), or designee is responsible for coordinating cross-divisional environmental matters and

for overseeing center environmental activities, including NEPA compliance.

i. Assistant Administrator for Financial Services (ABA) is responsible for assuring that adequate funding is available for NEPA activities in the budget outyears. ABA assures that services, regions, centers, and offices consider NEPA activities in their budget submittals in the annual call for estimates. The Office of Budget (ABU) also uses this order as the basis for supporting the annual call for estimates related to additional costs required for environmental activities.

j. The Assistant Administrator for Human Resource Management (AHR) is responsible for incorporating training requirements in the individual development plans for appropriate personnel. Within AHR, the Office of Learning and Development (AHT) assures that FAA training is updated to include instruction on NEPA for appropriate personnel, in cooperation with the Center for Management Development, AHM, the FAA Academy, AMA, at the Mike Monroney Aeronautical Center, AMC, the Office of Environment and Energy within the Associate Administrator for Policy, Planning, and International Aviation, and the Environmental Law Branch of the Office of Chief Counsel, AGC, and training staff within the program offices.

k. The Office of Civil Rights (ACR) is responsible for determining whether projects receiving Federal financial assistance from the FAA comply with the appropriate civil rights laws and regulations, and executive orders, including those requirements under the E.O. 12898 and the accompanying Presidential Memorandum concerning environmental justice and DOT Order 5610 on environmental justice in the context of Title VI of the Civil Rights Act of 1964, as amended. (see Order 1400.11, Nondiscrimination in Federally Assisted Programs of FAA).

l. Associate Administrator for Civil Aviation Security (ACS) is responsible for NEPA compliance in security activities.

214.-299. *Reserved*

Chapter 3. Advisory and Emergency Actions and Categorical Exclusions

300. Introduction

This chapter provides guidance on whether a proposed action should be

classified as an advisory action, emergency action, or an action that is categorically excluded from further environmental review.

301. Advisory Actions

Some Federal actions are of an advisory nature and neither permissive nor enabling. Actions of this type are not considered major Federal actions under NEPA, and EAs or EISs are not required as a condition for implementing the action. If it is known or anticipated that some subsequent Federal action would require processing in accordance with environmental procedures, the FAA shall so indicate in the advisory action. Examples of advisory actions include:

a. Determinations under 14 CFR part 77, Objects Affecting Navigable Airspace, and

b. Determinations under 14 CFR part 157, Notice of Construction, Alteration, Activation, and Deactivation of Airports, and Marking and Lighting Recommendations. Determinations under 14 CFR part 157 apply to airports, helipads, and heliports.

302. Emergency Actions

Section 1506.11 of Title 40 of the CFR allows CEQ to grant alternative arrangements for, but not eliminate, NEPA compliance where a national emergency, disaster, or similar great urgency makes it necessary to take actions with significant environmental impacts without observing other provisions of CEQ regulations. The processing times may be reduced or, if the emergency situation warrants, preparation and processing of environmental documents may be abbreviated. The responsible FAA official should consult with AEE (Environment, Energy and Employee Safety Division, AEE-200) and AGC (Environmental Law Branch, AGC-620) for evaluation to assure national consistency. FAA should then consult CEQ as appropriate about alternative arrangements for complying with NEPA.

303. Categorical Exclusions

a. Categorical exclusions are those types of Federal actions that meet the criteria contained in 40 CFR 1508.4. They represent actions that, based on past experience with similar actions, do not normally require an EA or EIS because they do not individually or

cumulatively have a significant effect on the human environment, with the exception of extraordinary circumstances as set forth in paragraph 304. Categorical exclusions are presented in figure 3-2 by functional group.

b. The responsible FAA official must first determine whether a proposed action is within one of the categorical exclusions listed in figure 3-2. An action on the categorically excluded list is *not* automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before finalizing a decision to categorically exclude a proposed action. If it is uncertain whether an extraordinary circumstance applies to the proposed action, the responsible FAA official shall consult with appropriate offices for guidance. Figure 3-1, Categorical Exclusion Process, summarizes the categorical exclusion process. The following paragraphs provide more information on the categorical exclusion process.

c. Responsible officials in the FAA Office of Air Traffic may accept the categorical exclusion of the U.S. Department of Defense for actions relating to a request for designation of special use airspace when that request is subject to a categorical exclusion under the regulations of the requesting military department, except when the actions of the FAA are subject to an EA or an EIS, in accordance with a Memorandum of Understanding, dated January 26, 1998. The responsible Federal official must also determine that extraordinary circumstances, as defined in this order, do not exist.

304. Extraordinary Circumstances

Proposed Federal actions, normally categorically excluded, which have any of the following characteristics, shall be the subject of an EA, or, if potential impacts are significant, an EIS:

a. Likely to have a significant adverse effect on cultural resources pursuant to the National Historic Preservation Act of 1966, as amended.

b. Likely to result in a significant impact on properties protected under section 4(f) of the Department of Transportation Act.

Figure 3-1.—Categorical Exclusion Determination Process

Step 1	Step 2	Step 3	Step 4	Step 5
Responsible FAA official or project proponent defines proposed action.	Responsible FAA official reviews proposed action with list of categorical exclusions.	Responsible FAA official reviews action for extraordinary circumstances.	Responsible FAA official has an option to issue and file a categorical exclusion determination if extraordinary circumstances are not involved.	Approving FAA official proceeds with action.

c. Likely to have significant impact on natural, ecological (e.g., invasive species), or scenic resources of Federal, Tribal, State, or local significance (including, for example, Federally listed or proposed endangered, threatened, or candidate species or designated or proposed critical habitat under section 7 of the Endangered Species Act, resources protected by the Fish and Wildlife Coordination Act, wetlands under section 404 of the Clean Water Act, section 10 of the Rivers and Harbors Act, and E.O. 11988, floodplains under E.O. 11990, coastal resources under the Coastal Zone Management Act and Coastal Barriers Act, prime, unique, State or locally important farmlands under the Federal Farmlands Protection Act, energy supply and natural resources, and wild and scenic rivers, study or eligible river segments under the Wild and Scenic Rivers Act) and solid waste management.

d. Likely to cause substantial division or disruption of an established community, or disrupt orderly, planned development, or is likely to be not reasonably consistent with plans or goals that have been adopted by the community in which the project is located.

e. Likely to cause a significant increase in congestion from surface transportation (by causing decrease in Level of Service below acceptable level determined by appropriate transportation agency, such as a highway agency).

f. Likely to have a significant impact on noise levels of noise-sensitive areas.

g. Likely to have a significant impact on air quality or violate local, State, Tribal, or Federal air quality standards under the Clean Air Act Amendments of 1990.

h. Likely to have a significant impact on water quality, sole source aquifers, contaminate a public water supply system, or violate State or Tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

i. Likely to be highly controversial on environmental grounds. A proposed Federal action is considered highly

controversial when the action is opposed on environmental grounds by a Federal, State, Tribal, or local government agency or by a substantial number of the persons affected by the action. If in doubt about whether a proposed action is highly controversial, consult the program office's headquarters environmental division, AEE (Environment and Energy Team, AEE-200), regional counsel, or AGC (Environmental Law Branch, AGC-620) or assistance.

j. Likely to be inconsistent with any Federal, State, Tribal, or local law relating to the environmental aspects of the proposed action.

k. Likely to directly or indirectly create a significant impact on the human environment, including, but not limited to, actions likely to cause a significant lighting impact on residential areas or commercial use of business properties, likely to cause a significant impact on the visual nature of surrounding land uses (see sections 11 and 12, appendix 1 for additional information), likely to be contaminated with hazardous materials based on Phase I or Phase II Environmental Due Diligence Audit (EDDAs), or likely to cause such contamination (see section 10, appendix 1 for additional references and discussion).

305. Categorical Exclusion Documentation

Categorical exclusions are allowed under CEQ regulations to reduce delay and paperwork. Once categorical exclusions are developed according to paragraph 303, CEQ guidance strongly discourages additional paperwork to document that an activity is within a listed categorical exclusion and no extraordinary circumstances exist. The decision that a proposed action is within a categorical exclusion and that no extraordinary circumstances exist shall not be considered deficient if it is not supported by documentation verifying that the proposed action is categorically excluded (see, however, paragraph 306 and appendix 1 for information about specific findings or determinations and associated public notice and comment requirements

under other applicable environmental laws, regulations, and executive orders.). Unique circumstances may occur where the responsible FAA official may decide, for record-keeping purposes or in anticipation of litigation, to informally document the agency's review of potential extraordinary circumstances supporting the categorical exclusion determination for the proposed action. The responsible FAA official should consider documenting the review of whether extraordinary circumstances exist when there is a high degree of public controversy, when the applicability of a categorical exclusion is not intuitively clear, in anticipation of litigation, or when the project is perceived by the public as having the potential for adverse environmental effects. There is no prescribed format for any documentation that the responsible FAA official decides to include in the record to support a categorical exclusion. The responsible FAA official should use reasonable judgment on the type and minimum amount of information needed to document that extraordinary circumstances were considered and did not apply to the proposed action. For additional information, contact AEE-200 and AGC-620.

306. Other Environmental Laws and Requirements

Paragraph 304 identifies categories of environmental impacts that are subject to laws, regulations, or executive orders in addition to NEPA and which must be complied with before a Federal action is approved. The responsible FAA official must assure, to the fullest extent possible, that compliance with all applicable environmental requirements is reflected in the determination to apply a categorical exclusion. Such compliance, including any required consultations, findings or determinations, should be documented. Additional information on other environmental laws, regulations, and executive orders is provided in appendices 1 and 12.

307.-399. Reserved

Figure 3-2.—Categorical Exclusion List

Figure 3-2 is a comprehensive list of FAA's categorically excluded actions. Previously, only the categorical exclusions of general application were listed in the body of the order, while categorical exclusions of actions commonly carried out by one or a few services were listed in the appendices. This revised order consolidates both kinds of categorical exclusions into figure 3-2. The categorical exclusion list is classified by the following functions.

Administrative/General: Actions that are administrative or general in nature.

Certification: Actions concerning issuance of certificates or compliance with certification programs.

Equipment and Instrumentation: Actions involving installation, repair, or upgrade of equipment or instruments necessary for operations and safety.

Facility Siting and Maintenance: Actions involving acquisition, repair, replacement, maintenance, or upgrading of grounds, infrastructure, buildings, structures, or facilities that generally are minor in nature.

Procedural: Actions involving establishment, modification, or application of airspace procedures.

Regulatory: Actions involving compliance with, or exemptions to, regulatory programs or requirements.

Figure 3-2 also lists those categorical exclusions that refer to those actions for which there is no reasonable expectation of a change in use and thus should not cause environmental impacts.

All offices should use figure 3-2 in determining whether an action is categorically excluded. For reference, the office(s) that would *most commonly* use a categorical exclusion are provided in parentheses following the type of action. These actions may be used by more than one office.

Proposed additions and modifications to categorically excluded actions under this notice of availability for public comment are depicted in *italics*.

Note: Categorically excluded actions *proposed* under this notice and public procedure are depicted in *italics*.

Administrative/General Actions

1. Emergency measures regarding air or ground safety. (All)
 2. Release of airport land from Federal obligations and consent to long-term leases of dedicated airport property to the status of revenue-producing property. (APP)
 3. Approval of projects to carry out an FAA-approved 14 CFR part 150 noise compatibility program (NCP). (APP)
 4. *Issuance of Notices to Airmen (NOTAMS), which notify pilots and other interested parties of interim or temporary conditions.* (AFS, AVN)
 5. *FAA actions related to conveyance of land for airport purposes, surplus property, and joint use arrangements that do not substantially change the operating environment of the airport.* (APP, AND, ANI, and ASU)
 6. *Mandatory actions required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant except when the United States has substantial discretion over implementation of such requirements.*
- The following categorical exclusions refer to those actions for which there is no reasonable expectation of a change in use or activity that would cause environmental impacts.
7. Issuance of airport policy and planning documents including the National Plan of Integrated Airport Systems (NPIAS), Airport Improvement Program (AIP) priority system, and advisory circulars on planning, design, and development which are issued as administrative and technical guidance. (APP)
 8. Approval of an airport sponsor's request solely to impose Passenger Facility Charges (PFC). (ARP)
 9. Actions that are tentative, conditional, and clearly taken as a preliminary action to establish eligibility under an FAA program, including, for example, Airport Improvement Program (AIP) actions that are tentative and conditional and clearly taken as a preliminary action to establish an airport sponsor's eligibility under the AIP. (All)
 10. Administrative and operating actions, such as procurement documentation, organizational changes, personnel actions, and legislative proposals not originating in the FAA. (All)
 11. Agreements with foreign governments, *foreign civil aviation authorities*, international organizations, or U.S. Government departments calling for *cooperative activities* or the provision of technical assistance, advice, *equipment*, or services to those parties, *and the implementation of such agreements; negotiations and agreements to establish and define bilateral aviation safety relationships with foreign governments, and the implementation of such agreements;* attendance at international conferences and the meetings of international organizations, including participation in votes and other similar actions. (All)
 12. All delegations of authority to designated examiners, designated engineering representatives (DER), or airmen under section 314 of the FAA Act (49 U.S.C. 44702(d) and 45303). (AFS, AIR)
 13. FAA administrative actions associated with transfer of ownership or operation of an existing airport, by acquisition or long-term lease, as long as the transfer is limited to ownership, right of possession, and/or operating responsibility. (APP)
 14. Issuance of grants to prepare noise exposure maps and noise compatibility programs (NCP) under 49 U.S.C. 47503(2) and 47504 and, under 14 CFR part 150, FAA determinations to accept noise exposure maps and approve noise compatibility programs. (APP)
 15. Issuance of planning grants or state block grants (see most current version of FAA Order 5050.4). (APP)
 16. Conditional approval of an Airport Layout Plan (ALP). (APP)
 17. Planning and development of training, personnel efficiency, and performance projects and programs. (All)
 18. Policy and planning documents and legislative proposals not intended for, or which do not cause direct implementation of, project or system actions. (All)
 19. Project amendments (for example, increases in costs) that do not alter the environmental impact of the action. (All)
 20. Actions related to the retirement of the principal of bond or other indebtedness for terminal development. (APP)

Administrative/General Actions (end)

Note: Categorically excluded actions *proposed* under this notice and public procedure are depicted in *italics*.

Certification Actions

1. Actions that demonstrate compliance with 14 CFR part 36, Noise Certification: Aircraft and Airworthiness Certification. (AFS, AIR)

2. Approvals of aircraft *or launch vehicles* and engine repairs, parts, and alterations not affecting noise, emissions, or wastes. (All)

3. Issuance of certificates such as: (1) new, amended, or supplemental aircraft types that meet environmental regulations; (2) new, amended, or supplemental engine types that meet emission regulations; (3) new, amended, or supplemental engine types that have been excluded by the EPA (14 CFR 34.7); (4) medical, airmen, export, manned free balloon type, glider type, propeller type, supplemental type certificates not affecting noise, emission, or waste; and (5) mechanic schools, agricultural aircraft operations, repair stations, and other air agency ratings. (AFS, AIR)

4. Operating specifications and amendments that do not significantly change the operating environment of the airport. These would include, but are not limited to, authorizing use of an alternate airport, administrative revisions to operations specifications, or use of an airport on a one-time basis. The use of an airport on a one-time basis means the operator will not have scheduled operations at the airport, or will not use the aircraft for which the operator requests an amended operations specification, on a scheduled basis. (AFS)

The following categorical exclusions refer to those actions for which there is no reasonable expectation of a change in use or activity that would cause environmental impacts.

5. Issuance of certificates and related actions under the Airport Certification Program (14 CFR part 139). (APP)

6. Issuance of Airworthiness Directives (ADs) to ensure aircraft safety. (AFS, AIR)

Note: Categorically excluded actions *proposed* under this notice and public procedure are depicted in *italics*.

Equipment and Instrumentation Actions

1. Construction of Remote Communications Outlet (RCO), *or replacement with essentially similar facilities or equipment*, to provide air-to-ground communication between pilots of general aviation aircraft and personnel in Flight Service Stations (FSS). (AAF, AND)

2. Establishment, installation, upgrade, or relocation within the perimeter of an airport: airfield or approach lighting systems, such as Runway End Identifier Lights (REIL), Omnidirectional Airport Lighting Systems (ODALS), *High Intensity Approach Lighting System With Flashers (ALSF-2); Medium Approach Lighting System with a REIL (MALSR/SALSR)*; visual approach aids, beacons, and electrical distribution systems, such as Visual Approach Slope Indicators (VASIs) and Precision Approach Path Indicators (PAPIs). (AAF, AND, APP, ANI)

3. Federal financial assistance or ALP approval or FAA installation of facilities and equipment, other than radars, within a facility or within the perimeter of an airport *or launch facility* (e.g. weather systems, navigational aids, and hygrometers). Weather systems include Automated Weather Observing System (AWOS), Automatic Surface Observation System (ASOS), Runway Visual Range (RVR), Low Level Wind Shear Alert System (LLWAS), *other essentially similar facilities and equipment* that provides for modernization or enhancement of the service provided by these facilities. Navigational aids include Instrument Landing System (ILS) equipment or components of ILS equipment, other essentially similar facilities and equipment, and equipment that provides for modernization or enhancement of the service provided by that facility. (AAF, AUA, AND, APP)

4. Federal financial assistance or ALP approval or FAA installation of radar facilities and equipment, within a facility or within the perimeter of an airport *or launch facility*, that conform to the current American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) guidelines for maximum permissible exposure to electromagnetic fields. Radar facilities and equipment include Terminal Doppler Weather Radar (TDWR), Next Generation Weather Radar (NEXRAD), Precision Runway Monitor (PRM), Airport Surface Detection Equipment (ASDE), Air Route Surveillance Radar (ARSR), Airport Surveillance Radar (ASR), Air Traffic Control Beacon (ATCB), *and other essentially similar facilities and equipment*. In addition, this includes equipment that provides for modernization or enhancement of the service provided by these facilities, such as Radar Bright Display Equipment (RBDE) with Plan View Displays (PVD), Direct Access Radar Channel (DARC), and a beacon system on an existing radar. (AAF, AUA, AND, APP)

5. Federal financial assistance or Airport Layout Plan (ALP) approval of miscellaneous items including wind indicators, wind measuring devices, landing directional equipment, segmented circles (visual indicators providing traffic pattern information at airports without air traffic control towers), and fencing. (APP)

6. Installation or replacement of engine generators used in emergencies when commercial power fails. (AAF, AND, AST)

7. Replacement of power and control cables for facilities and equipment, such as airport lighting systems (ALS), *launch facility lighting systems*, airport surveillance radar (ASR), *launch facility surveillance radar*, Instrument Landing System (ILS), and Runway Visual Range (RVR). (AAF, AND)

8. Location of wind and other weather instruments within the perimeter of airports and launch facilities. (AAF, AND, AST)

The following categorical exclusions refer to those actions for which there is no reasonable expectation of a change in use or activity that would cause environmental impacts.

9. Acquisition of security equipment required by rule or regulation for the safety or security of personnel and property on the airport *or launch facility* (14 CFR part 107, Airport Security), safety equipment required by rule or regulation for certification of an airport (14 CFR part 139, Certification and Operation: Land Airports Serving Certain Air Carriers) or *licensing of a launch facility*, or snow removal equipment. (APP, AST)

Equipment and Instrumentation Actions (end)

Note: Categorically excluded actions *proposed* under this notice and public procedure are depicted in *italics*.

Facility Siting and Maintenance Actions

1. Access road construction and relocation or repair of entrance and service roadways that do not reduce the Level of Service on local traffic systems below acceptable levels. (AAF, AND, APP, AST)
2. Acquisition of land and relocation associated with a categorically excluded action. (ASU, APP)
3. Actions such as installation 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)
4. *Federal financial assistance, Airport Layout Plan (ALP) approval, or FAA installation of de-icing/anti-icing facilities that comply with National Pollutant Discharge Elimination System (NPDES) permits or other permits protecting the quality of receiving waters, and for which related water detention or retention facilities are designed not to attract hazardous wildlife, as defined in FAA Advisory Circular 150-5200-33.* (AAF, APP)
5. Federal financial assistance, licensing, or Airport Layout Plan (ALP) approval to build or repair an existing runway, taxiway, apron, or loading ramp, including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, provided the action will not create environmental impacts outside of an airport or launch facility property. (APP, AST)
6. Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA construction or *limited expansion* of accessory on-site structures, including storage buildings, garages, small parking areas, signs, fences, and other essentially similar minor airport development items. (AAF, AND, APP, AST)
7. Construction of Remote Transmitter/Receiver (RT/R), or other essentially similar facilities and equipment, to supplement existing communications channels installed in the Air Traffic Control Tower (ATCT) or Flight Service Station (FSS). (AAF, AND)
8. *Federal financial assistance, licensing, or ALP approval for construction or limited expansion of facilities, such as terminal passenger handling facilities or cargo buildings, at existing commercial service airports and launch facilities that do not substantially expand those facilities.* (All)
9. Demolition and removal of buildings and structures, except those of historic, archaeological, or architectural significance as officially designated by Federal, State, or local government; and alteration of an existing facility that does not alter or change environmental impacts of the existing facility or structure, provided no toxic or hazardous substances contamination is present on the site or in equipment on the site. (AND, AST)
10. Extension of water, sewage, electrical, gas, or other utilities of temporary duration to serve construction. (AAF, AND, AST)
11. Filling of earth into previously excavated land with material compatible with the natural features of the site, provided the land is not delineated as a wetland. (AAF, AND, AST)
12. Federal financial assistance, licensing, or FAA grading of land or removal of obstructions on airport or launch facility property, and erosion control measures having no impacts outside of airport property or outside of the launch facility. (AAF, AND, APP, AST)
13. Lease of space in buildings or towers for a firm-term of one year or less. (ASU)
14. Minor expansion of facilities, including the addition of equipment, such as telecommunications equipment, on an existing facility where no additional land is required, or when expansion is due to remodeling of space in current quarters or existing buildings. Additions may include antennas, concrete pad and minor trenching for cable. (AAF, AOP, AND, AST)
15. Minor trenching and backfilling where the surface is restored and the excavated material is protected against erosion and runoffs during the construction period. (AAF, AND, APP, AST)
16. New gardening or landscaping, and maintenance of existing landscaping. (AAF, AND, APP, AST)
17. Construction and installation, on airports or launch facilities, of noise abatement measures, such as noise barriers to diminish aircraft and launch vehicle engine exhaust blast or noise, and installation of noise control materials. (All)
18. Purchase, lease, or acquisition of three acres or less of land with associated easements and rights-of-way for new facilities. (ASU, AND, AAF)
19. Repairs and resurfacing of existing access to remote facilities and equipment, such as Air Route Surveillance Radar (ARSR), Remote Center Air/Ground Communications Facility (RCAG), Remote Communications Outlet (RCO), and VHF Omnidirectional Range (VOR) with TACAN (VORTAC). Upgrading facilities and equipment to improve operational efficiency, such as existing runway approach lighting installations, conversion of VOR to VOR with TACAN (VORTAC), or conversion of ILS to category II or III standards. (AAF, AND)
20. Federal financial assistance, Airport Layout Plan (ALP) approval, or licensing of a new heliport on an existing airport or launch facility that would not significantly increase noise over noise sensitive areas. (APP, AST)
21. *Repair or replacement of underground storage tanks (UST), or replacement of UST with above ground storage tanks at the same location.* (AAF)
22. Replacement or reconstruction of a terminal, structure, or facility with a new one of substantially the same size and purpose, where location will be on the same site as the existing building or facility. (AAF, AND, APP, AST)
23. *Maintenance of existing roads and rights-of-way, including, for example, snow removal, landscape repair, and erosion control work.* (All)
24. Routine facility decommissioning, exclusive of disposal. (AND, AST)
25. Take over of non-Federal facilities by the FAA. (AAF, AVN)
26. *Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA action related to topping or trimming trees to meet 14 CFR part 77 (Objects Affecting Navigable Airspace) standards for removing obstructions which can adversely affect navigable airspace.* (All)
27. Upgrading of building electrical systems or maintenance of existing facilities, such as painting, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas, and replacement of underground facilities. (AAF, AST)

Facility Siting and Maintenance Actions (end)

Note: Categorically excluded actions *proposed* under this notice and public procedure are depicted in *italics*.

Procedural Actions

1. Rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (14 CFR part 71, "Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas; Airways; Routes; and Reporting Points"). (AAT)

2. Actions regarding: establishment of Federal airways (14 CFR 71.75); operation of civil aircraft in a defense area, or to, within, or out of the United States through a designated Air Defense Identification Zone (ADIZ), (14 CFR part 99, "Security Control of Air Traffic"); authorizations for operation of moored balloons, moored kites, unmanned rockets, and unmanned free balloons (14 CFR part 101, "Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Balloons"); and, authorizations of parachute jumping and inspection of parachute equipment, (14 CFR part 105, "Parachute Jumping"). (AAT)

3. *Actions to return all or part of special use airspace (SUA) to the National Airspace System (NAS) (such as revocation of airspace or a decrease in dimensions or times of use).* (AAT)

4. Modification of the technical description of SUA involving minor adjustments to the dimensions, altitudes, or times of designation of that airspace (such as changes in designation of the controlling or using agency). (AAT)

5. *Designation of alert areas and controlled firing areas.* (AAT)

6. *Establishment or modification of Special Use Airspace (SUA), (e.g., restricted areas, warning areas), and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level (AGL), or higher.* (AAT)

7. *Establishment or modification of Special Use Airspace (SUA) for supersonic flying operations over land and above 30,000 feet mean sea level (MSL) or over water above 10,000 feet MSL and more than 15 nautical miles from land.* (AAT)

8. *Establishment of Global Positioning System (GPS), Flight Management System (FMS), or essentially similar systems, that use overlay of existing procedures.* (AAF, AAT, AFS, AVN, AST)

9. Establishment of helicopter tracks that channel helicopter activity over major thoroughfares. (AAT, AFS, AVN)

10. Establishment of new procedures that routinely route aircraft over non-noise sensitive areas. (AAT)

11. Establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); instrument procedures conducted below 3,000 feet (AGL) that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved instrument procedures conducted below 3,000 feet (AGL) that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. *For Air Traffic modifications to procedures at or above 3,000 feet (AGL), the Air Traffic Noise Screening Procedure (ATNS) should be applied.* (AAT, AFS, AVN)

12. *Establishment of procedural actions dictated by emergency determinations.* (AAT, AST)

13. *Publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks.* (AAT, AFS, AVN)

14. Removal of a displaced runway threshold on an existing runway. (APP, AST)

15. *A short-term change in air traffic control procedures, not to exceed six months, conducted under 3,000 feet above ground level (AGL) to accommodate airport construction.* (AAT)

16. *Tests of air traffic departure or arrival procedures conducted under 3,000 feet above ground level (AGL), provided that: (1) the duration of the test does not exceed six months; (2) the test is requested by an airport or launch operator in response to mitigating noise concerns, or initiated by the FAA for safety or efficiency of proposed procedures; and (3) test data collected will be used to assess operational and noise impacts of the test.*

17. Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment. (AAT)

18. *Approval under 14 CFR part 161 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.* (APP)

Procedural Actions (end)

Note: Categorically excluded actions *proposed* under this notice and public procedure are depicted in *italics*.

Regulatory Actions

1. All FAA actions to ensure compliance with EPA aircraft emissions standards. (AEE)

2. Authorizations and waivers for infrequent or one-time actions, such as an airshow, that may result in some temporary impacts that revert back to original conditions upon action completion. (APP, AAF, AFS, AVN)

3. Denials of routine petitions for: (1) exemption; (2) reconsideration of a denial of exemption; (3) rulemaking; (4) reconsideration of a denial of a petition for rulemaking; and (5) exemptions to technical standard orders (TSOs). (AEE, AFS, AIR, AST, ATS)

4. *Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking, and issuance of Final Rules) covering administrative or procedural requirements (not including Air Traffic procedures unless otherwise categorically excluded).* (AFS, AGC)

5. Issuance of special flight authorizations controlled by operating limitations, specified in 14 CFR 21.199, 14 CFR 91.319, 14 CFR 91.611, and 14 CFR 91.859. (AFS, AIR, AEE)

Chapter 4. Environmental Assessments and Findings of no Significant Impact

400. Introduction

This chapter summarizes and supplements CEQ requirements for environmental assessments (EA) and findings of no significant impact (FONSI). According to 40 CFR 1508.9 and Order DOT 5610.1C CHG 1, paragraph 4d (July 13, 1982), an environmental assessment (EA) is a concise document used to describe a proposed action's anticipated environmental impacts. In 1978, the CEQ revised its regulations to allow agencies to prepare EAs in accordance with section 102(2)(E) and 40 CFR 1501.2c and 1507.2(d), when the following conditions apply or at any time to aid in agency planning and decisionmaking.

a. When to prepare an EA. An EA, at a minimum, must be prepared for a proposed action when the initial review of the proposed action indicates that:

(1) It is not categorically excluded (see figure 3-2 and paragraph 303);

(2) It is normally categorically excluded but, in this instance, involves at least one extraordinary circumstance (see paragraph 304);

(3) It is highly controversial on environmental grounds (see paragraph 304n); or

(4) The action is not one known normally to require an RIS and is not categorically excluded.

b. Actions not causing significant environmental effects. If, based on an EA, the responsible FAA official determines that the proposed action would not cause a significant environmental effect, the responsible FAA official shall prepare a FONSI for the signature of the approving official.

c. Actions causing significant environmental effects. If, based on an EA, the responsible FAA official determines that the proposed action would cause a significant environmental effect, and mitigation would not reduce that effect below applicable significance thresholds, the responsible FAA official shall publish a notice of intent (NOI) to prepare an EIS in the **Federal Register** and begin the EIS process. When the responsible FAA official anticipates that significant effects may result, a decision can be made to prepare an EIS without first developing an EA.

401. Actions Normally Requiring an Environmental Assessment (EA)

The following actions are examples of actions that normally require an EA. Some FAA projects involve actions by multiple FAA program offices.

The overall significance of these actions, when viewed together, governs whether an EA or an EIS is required.

a. Acquisition of land for, and the construction of, new FAA facilities.

b. Issuance of aircraft type certificates for new, amended, or supplemental aircraft types for which environmental regulations have not been issued, or new, amended, or supplemental engine types for which regulations have not been issued, or where an environmental analysis has not been prepared in connection with regulatory action.

c. Evaluation of new launch vehicles for new, amended, or supplemental types of launch vehicles, for which licenses have not been issued, or where an environmental analysis has not been prepared in connection with regulatory action.

d. Aircraft/avionics maintenance bases to be operated by the FAA.

e. Authorization to exceed Mach 1 flight under 14 CFR 91.817.

f. Establishment of FAA housing, sanitation systems, fuel storage and distribution systems, and power source and distribution systems.

g. Establishment or relocation of facilities such as Air Route Traffic Control Centers (ARTCC), Air Traffic Control Towers (ATCT), Air Route Surveillance Radars (ARSR), Beacon Only Sites, and Next Generation Radar (NEXRAD).

h. Establishment, relocation, or construction of facilities used for communications and navigation which are not on airport property.

i. Establishment or relocation of assisted landing systems (e.g., ILS) and approach light systems (ALS).

j. Federal financial participation in, or unconditional airport layout plan approval of, the following categories of airport actions:

(1) Airport location.

(2) New runway.

(3) Major runway extension.

(4) Runway strengthening having the potential to increase off-airport noise impacts by DNL 1.5 dB or greater over noise sensitive land uses within the day-night level (DNL) 65 dB noise contour.

(5) Construction or relocation of entrance or service road connections to public roads which substantially reduce the Level of Service rating of such public roads below the acceptable level determined by the appropriate transportation agency (i.e., a highway agency).

(6) Land acquisition associated with any of the items in paragraph 402j(1) through 402j(5).

k. Issuance of an operating certificate, issuance of an air carrier operating

certificate, or approval of operations specifications or amendments that may significantly change the character of the operational environment of an airport, and including, but not limited to:

(1) Approval of operations specifications authorizing an operator to use turbojet aircraft for scheduled passenger or cargo service into an airport when that airport has not previously been served by any scheduled turbojet aircraft.

(2) Approval of operations specifications authorizing an operator to use the Concorde for any scheduled or nonscheduled service into an airport, unless environmental documentation for such service has been prepared previously and circumstances have not changed.

(3) Issuance of an air carrier operating certificate or approval of operations specification when a commuter upgrades to turbojet aircraft.

l. 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).

m. New or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet AGL.

n. Regulations (and exemptions and waivers to regulations) which may affect the human environment.

o. Special Use Airspace if the floor of the proposed area is below 3,000 feet AGL, or if supersonic flight is anticipated at any altitude. This airspace shall not be designated, established, or modified until:

(1) The notice (notice of proposed rulemaking (NPRM) or non-rule circular) contains a statement supplied by the requesting or using agency that they will serve as lead agency for purposes of compliance with NEPA, and in accordance with paragraph 207, Lead and Cooperating Agencies; (e.g., restricted airspace for military use in accordance with the Memorandum of Understanding (MOU) between the FAA and the Department of Defense (January 1998)).

(2) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on the environmental aspects can be addressed (applicable only if an EIS is to be filed by the requesting agency).

(3) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on any

land use problems can be addressed (applicable only if Special Use Airspace extends to the surface).

(4) The rule, determination, or other publication of the airspace action contains a statement that the FAA has reviewed and adopted the EA prepared by the requesting agency in accordance with paragraph 404.

403. Impact Categories

Appendix 1 of this order identifies environmental impact categories that FAA examines for most of its actions. Appendix 1 provides references to current requirements; information about permits, certificates, or other forms of approval and review; an overview of specific responsibilities for gathering data, assessing impacts, consulting other agencies, and involving the public; and any established significant impact thresholds. The responsible FAA official should contact the reviewing or pertinent approving agencies for information regarding specific timeframes for applicable review or approval processes.

404. Environmental Assessment Process

When the responsible FAA official has determined that the proposed action cannot be categorically excluded the responsible FAA official will begin preparing an EA. Figure 4-1, Environmental Assessment Process, presents the EA review process for a typical action. The responsible FAA official does not need to prepare an EA if an EIS is prepared.

a. The responsible FAA official or applicant begins by gathering data, coordinating or consulting with other agencies, and analyzing potential impacts. The responsible FAA official or applicant contacts appropriate Federal, Tribal, State, and local officials to obtain information concerning potential environmental impacts and maintain appropriate contact with these parties for the remainder of the NEPA process. Public involvement is an integral part of the NEPA process and the CEQ regulations require agencies to make diligent efforts to involve the public in implementing their NEPA procedures (40 CFR 1506.6(a); and paragraph 208 regarding public involvement). When the agency receives comments from the public, the comments should be handled as formal comments and included in the administrative record (see FAA "Community Involvement Manual," August 1990, and Appendix 5, Scoping Guidance).

b. Program offices must prepare concise EA documents with sufficient analysis for the following purposes to:

(1) Understand the purpose and need for the proposed action, identify reasonable alternatives, including a no action alternative, and assess the proposed action's potential environmental impacts.

(2) Determine if an EIS is needed because the proposed action's potential environmental impacts will be significant.

(3) Determine if a FONSI can be issued because the proposed action will have no significant impacts.

(4) Determine if a FONSI can be issued because mitigation will avoid the proposed action's significant impacts or reduce those impacts below significant thresholds.

(5) Provide a comprehensive approach for identifying and satisfying applicable environmental laws, regulations, and executive orders in an efficient manner (see figure 1-1 and appendix 1). Although the NEPA process does not preclude separate compliance with these other laws, regulations, and executive orders, the responsible FAA official should integrate NEPA requirements with other planning and environmental reviews, interagency and intergovernmental consultation, as well as public involvement requirements to reduce paperwork and delay, in accordance with 40 CFR 1500.4(k) and 1500.5(g). Additionally, 40 CFR 1508.27(b) and (b)(10), which define "significance" in terms of the intensity or severity of the impact and specifically in terms of "whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment," should be considered in the event of a change in the status of the proposed action's impacts.

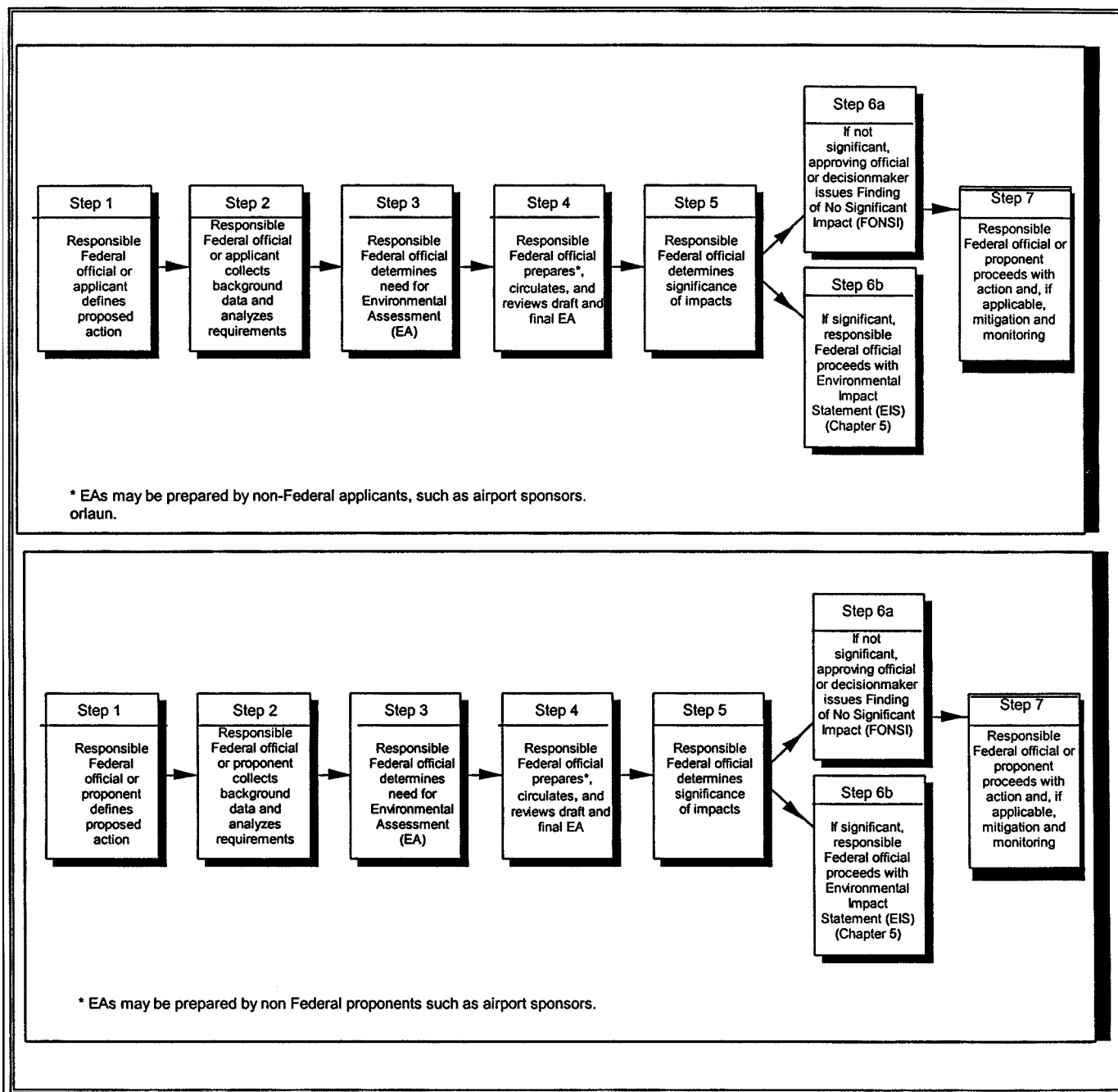
(6) Identify any permits, licenses, other approvals, or reviews that apply to the proposed action.

(7) Identify agencies, including cooperating agencies, consulted.

(8) Identify any public involvement activities.

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Figure 4-1. Environmental Assessment Process



- c. The EA should present detailed analysis, commensurate with the level of impact of the proposed action and alternatives to determine whether any impacts will be significant. If the proposed action and its alternatives will not cause impacts within specific categories of environmental impacts, a brief statement that the action is not likely to cause environmental impacts within these impact categories is sufficient. The EA may also be tiered to cover broad or programmatic proposed actions, such as rulemaking, policy decisions, and regional or national programs (see also paragraphs 409 and 513 regarding tiering).

d. FAA may adopt, in whole or in part, EAs or EA/FONSIs prepared by other agencies. When the FAA adopts an EA or the EA portion of another agency's EA/FONSI, the responsible FAA official must independently make a written evaluation of the information contained in the EA, take full responsibility for scope and content that addresses FAA actions, and issue its own FONSI. The responsible FAA official may also summarize the adopted portion followed by a direct reference to the EA. If more than three years have elapsed since the FONSI was issued, the responsible FAA official should prepare a written reevaluation of the EA (see paragraph 516). The responsible FAA official should forward a copy of the FONSI to EPA when it adopts another agency's EA or EA/FONSI (see also
- paragraph 518 regarding adoption of NEPA documents).

e. Internal review of the EA is conducted by potentially affected FAA program offices having an interest in the proposed action to assure that all FAA concerns have been addressed, and with AGC or Regional Counsel to assure that the EA is technically and legally adequate. For projects that originate in or are approved at FAA headquarters, the EA and FONSI should be coordinated with AGC for legal sufficiency. For projects that originate in and are approved by the regions, the EA and FONSI should be reviewed by regional counsel. The responsible FAA official should contact the environmental divisions of program offices to determine appropriate levels of coordination. The responsible FAA official should consult with AEE (Environment and Energy Team; AEE-200) for general advice on compliance with NEPA and other applicable environmental laws, regulations, and executive orders, especially for actions of national importance or which are highly controversial.

f. Upon review of the completed EA, public comments, and applicable interagency and intergovernmental consultation (see paragraph 210), the responsible FAA official will determine whether any adverse environmental impacts analyzed in the EA are significant. If the responsible FAA official determines that these impacts do not exceed applicable significance
- levels, or mitigation discussed in the EA and made an integral part of the project clearly will reduce identified impacts below significance levels, the responsible FAA official will prepare a FONSI. The approving official, who may also be the responsible FAA official, will sign the FONSI. This FONSI will either state that no significant impacts are expected or list those mitigation measures discussed in the EA that the responsible FAA official deems necessary to prevent significant environmental impacts and will make a condition of project approval. If the responsible FAA official determines that mitigation will not reduce significant environmental impacts below applicable significance thresholds, the responsible FAA official will publish a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** to proceed.

g. If the responsible FAA official does not accept an EA prepared by another agency, the responsible FAA official shall specify in its comments to that agency whether it needs any additional information or describe the mitigation measures the FAA considers necessary to grant or approve an applicable permit, license, or related requirements or concurrences. If the responsible FAA official comments on the action agency's predictive methodology, the responsible FAA official should describe the preferred alternative methodology and explain why the FAA prefers this methodology.

Figure 4-2.—Environmental Assessment Overview

Purpose	Scope	Content	Public participation
Assist agency planning and decision-making by summarizing environmental impacts to determine need for: <ul style="list-style-type: none">• An EIS• Mitigation measures	Addresses the proposed action's impacts on affected environmental resources	Describes and identifies: <ul style="list-style-type: none">• Purpose and need for the proposed action• Proposed action• Alternatives considered (including the no action alternative)• Affected environment (baseline conditions)• Environmental consequences of the proposed action and alternatives• Mitigation• Agencies and persons consulted	As appropriate. Varies from none for simple EAs where no public interest exists to substantial participation in complex or controversial actions.

405. Sample Environmental Assessment Format

Figure 4-2, Environmental Assessment Overview, presents an overview of the EA process, while the following text describes the contents and purpose of an EA. The CEQ regulations do not specify a required

format for an EA (see 40 CFR 1508.9); however, following the sample or a similar format will facilitate preparation of an EA, or EIS if an EIS is needed, and integrate compliance with other environmental laws, regulations, and Executive Orders with NEPA review. The following sample format for an EA

is optional for FAA program offices to use.

a. Cover Page

This page is labeled "Environmental Assessment." It identifies the proposed action and the geographic location of the proposed action. When EAs are prepared by an applicant or contractor

for an applicant, the following notification would be located at the bottom: "This Environmental Assessment becomes a Federal document when evaluated and signed and dated by the responsible FAA official."

b. Proposed Action

This discussion describes the proposed action with sufficient detail in terms that are understandable to individuals who are not familiar with aviation.

c. Purpose and Need

This discussion identifies the problem facing the proponent (that is, the need for an action), the purpose of the action (that is, the proposed solution to the problem), and the proposed timeframe for implementing the action. The purpose and need for the proposed action must be clearly justified and stated in terms that are understandable to individuals who are not familiar with aviation or aerospace activities.

d. Alternatives (Including Proposed Action)

The range of alternatives discussed in an EA will include those to be considered by the approving official. At a minimum, the proposed action and the no action alternatives must be considered. Other reasonable alternatives are to be considered in preparing an EA to the degree commensurate with the nature of the proposed action. Generally, the greater the degree of impacts, the wider the range of alternatives that should be considered to avoid or minimize the impacts. Whether a proposed alternative is reasonable depends upon the extent to which it meets the purpose and need for the proposed action (see also paragraph 506e for more information on alternatives). The EA briefly presents the environmental impacts of the proposed action and the alternatives in comparative form to sharply define the issues and provide a clear basis for choice among options by the approving official. For alternatives considered but eliminated from further study, the EA will briefly explain why these were eliminated. The alternatives discussion of the EA includes:

(1) A list of alternatives considered, including the proposed action and the no action alternatives. For each alternative, any connected or cumulative actions should also be considered.

(2) A statement identifying the preferred alternative, if one has been identified.

(3) A concise statement explaining why any initial alternatives considered have been eliminated from further study, i.e., they are not reasonable because they fail to meet the purpose and need for the proposed action.

(4) A listing under each alternative of any other applicable laws, regulations, and executive orders and associated permits, licenses, approvals, and reviews.

(5) Charts, graphs, and figures, if appropriate, to aid in understanding the alternatives, for example, to depict alternative runway configurations.

e. Affected Environment

This section shall succinctly describe existing environmental conditions of the potentially affected geographic area(s). This discussion may highlight important background material, such as previous and reasonably foreseeable development and actions, whether Federal or non-Federal. It also may include such information as actions taken or proposed by the community or citizen groups pertinent to the proposal, or any other unique factors associated with the action. However, data and analyses should be commensurate with the importance of the impact. The discussion of the affected environment in the EA may include the following, if appropriate:

(1) Location map, vicinity map, project layout plan, and photographs.
(2) Existing and planned land uses and zoning including: industrial and commercial growth characteristics in the affected vicinity, affected residential areas, schools, places of outdoor assemblies of persons, churches, and hospitals; public parks, wildlife and waterfowl refuges; Federally listed or proposed candidate, threatened, or endangered species or Federally designated or proposed critical habitat; wetlands; floodplains; farmlands; coastal zones, coastal barriers, or coral reefs; recreation areas; wilderness areas, eligible, study or designated wild and scenic rivers, Native American cultural sites, and historic and archeological sites eligible for or listed on the National Register of Historic Places.

(3) Political jurisdictions affected by the proposed action.

(4) Population estimates and other relevant demographic information for the affected environment, including a census map where appropriate.

(5) Past, present, and reasonably foreseeable future actions, whether Federal or non-Federal, and including related or connected actions (40 CFR 1501.7(a), 1502.4(a), 1508.25(a)(1), and 1508.27(b)(7)), to show the cumulative effects (40 CFR 1508.7) of these actions

on the affected environment (see CEQ Guidance on Considering Cumulative Effects Under the National Environmental Policy Act (January 1997) and EPA Guidance on Consideration of Cumulative Impacts in EPA Review of NEPA Documents (May 1999).

f. Environmental Consequences

(1) At a minimum, the EA must discuss the reasonably foreseeable environmental consequences of the proposed action and no action alternatives in comparative form. Environmental impacts of other alternatives that are being considered should also be discussed in the EA. Any adverse environmental effects that cannot be avoided if the proposed action is implemented and mitigation, if applicable, must be discussed. This section should not duplicate discussions in the Alternatives section. Instead, the environmental consequences section shall, for each alternative, include considerations of the following effects (40 CFR 1508.8):

(a) Direct effects and their significance (40 CFR 1508.8(a));

(b) Indirect effects and their significance (40 CFR 1508.8(b));

(c) Cumulative effects and their significance (40 CFR 1508.7; see CEQ "Considering Cumulative Effects Under the National Environmental Policy Act," January 1997); and

(d) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of an Indian reservation, Tribal) land use plans, policies and controls for the area concerned (40 CFR 1502.16(c)).

(e) Other unresolved conflicts (40 CFR 1501.2(c)).

(2) For those types of impacts that the proposed action and alternatives would have, directly or indirectly, the analysis required in the respective environmental impact categories listed in appendix 1 shall be discussed to the level of detail necessary to determine the significance of the impact.

(3) Appendix 1, Analysis of Environmental Impact Areas, briefly describes the major laws, regulations, and executive orders in addition to NEPA that must be complied with for different impact areas before a proposed Federal action is approved. A proposed Federal action may fall within the purview of one or more of these requirements. The responsible FAA official must assure that proposed Federal actions comply with applicable requirements. To reduce paperwork and delay and assure that the necessary approvals and permits will be issued

with or immediately following issuance of the EA and FONSI, the responsible FAA official should identify the timeframes established for review by the oversight agency and the information that the FAA will need to provide to the oversight agency to complete its review, and integrate these into the EA process. If an EA is being prepared it should include the information required to demonstrate compliance, as appropriate, with other applicable requirements.

g. Mitigation

The EA may include reasonable mitigation measures. If mitigation is discussed, it shall be in sufficient detail to describe the benefits of the mitigation. Each impact category in appendix 1 identifies conditions that normally indicate a threshold beyond which the impact is considered significant and an EIS is required for the action (see also paragraph 506h regarding mitigation). If the EA contains mitigation measures necessary to reduce potentially significant impacts below applicable significance thresholds, an EIS is not needed and the approving official may issue a FONSI after considering:

(1) Whether the agency took a "hard look" at the problem.

(2) Whether the agency identified the relevant areas of environmental concern.

(3) For the areas of environmental concern identified and studied, whether the EA supports the agency's determination that the potential impacts will be insignificant.

(4) Whether the agency has identified mitigation measures that will be sufficient to reduce potential impacts below applicable significance thresholds and has assured commitments to implement these measures.

Proposed changes in or deletion of a mitigation measure that was included as a condition of approval of the FONSI must be reviewed by the same FAA offices that reviewed the original FONSI and must be approved by the same approving official (see paragraph 407 for monitoring mitigation). If the changes in mitigation will result in significant impacts, the responsible FAA official must then initiate the EIS process by preparing an NOI to prepare an EIS.

h. List of Preparers

When an EA is prepared by the FAA, the EA must include a list of the names and qualifications of personnel who prepared the EA. When EAs are prepared for the FAA, the EA must list the names and qualifications of the

preparers of an EA. Contractors will be identified as having assisted in preparing the EA.

i. List of Agencies and Persons Consulted

The EA must include a list of agencies and persons consulted.

j. Appendixes

The EA may include the following appendixes, if applicable:

(1) Any documentation that supports statements and conclusions in the body of the EA, including methodologies and references used. Proper citations to reference materials should be provided.

(2) Evidence of coordination or required consultation with affected Federal, Tribal, State and local officials and copies or a summary of their comments or recommendations and the responses to such comments and recommendations.

(3) A summary of public involvement, including evidence of the opportunity for a public hearing, if required under applicable Federal laws, regulations, and Executive Orders, and a summary of issues raised at any public hearing or public meeting as well as agency responses to those comments.

406. *Finding of No Significant Impact (FONSI)*

a. Purpose

The purpose of an EA is to determine if a proposed action has the potential for significant environmental impacts. If none of the potential impacts is likely to be significant, then the responsible FAA official shall prepare a finding of no significant impact (FONSI), which briefly presents, in writing, the reasons why an action, not otherwise categorically excluded, will not have a significant impact on the human environment, and the Approving Official may approve it. Issuance of a FONSI signifies that the FAA will not prepare an EIS and the FAA has completed the NEPA process for the proposed action. (The issuance of a FONSI does not mean that the agency has decided to act, only that it has found that the proposed action will not have a significant impact on the environment, see paragraph 408.) An overview of a FONSI is presented in Figure 4-3, Findings of No Significant Impact Overview.

b. Scope of Documentation

The CEQ regulations do not specify a format for FONSI, but FONSI must contain the information discussed in 40 CFR 1508.13.

(1) The FONSI may be attached to an EA, or the EA and FONSI may be

combined into a single document. If the EA is not attached or combined with FONSI, the FONSI must include a summary of the EA and note any other environmental documents related to it. If the EA is attached or included with the FONSI, the FONSI does not need to repeat any of the discussion in the EA but may incorporate it by reference. However, the FONSI shall briefly describe the proposed action, its purpose and need, the alternatives considered, including the no action alternative, and assess and document all relevant matters necessary to support the conclusion that the action is not a major Federal action significantly affecting the quality of the human environment. The degree of attention given to different environmental factors will vary according to the nature, scale, and location of the proposed action, and thus, depending on the complexity and degree of impact of a proposed action, a FONSI may range in content from a simple conclusion, supported with pertinent facts, that the action is not a major action significantly affecting the quality of the human environment, to an analysis involving the format and content necessary for EISs.

(2) The FONSI shall determine the proposed action's consistency or inconsistency with community planning, and shall document the basis for the determination.

(3) The FONSI shall present any measures that must be taken to mitigate adverse impacts on the environment and which are a condition of project approval (see paragraph 406e). The FONSI should also reflect coordination of proposed mitigation commitments with, and consent and commitment from, those with the authority to implement specific mitigation measures committed to in the FONSI.

(4) The FONSI shall reflect compliance with all applicable environmental laws and requirements, including interagency and intergovernmental coordination and consultation, public involvement, and documentation requirements (see paragraph 403f(4) and appendix 1). Findings and determinations required under special purpose environmental laws, regulations, and executive orders, if not made in the EA, must be included in the FONSI, which may be combined with a decision document, sometimes called a Record of Decision or FONSI/ROD.

Figure 4-3.—Finding of No Significant Impact Overview

Purpose	Scope	Content	Public participation
Documents Finding of No Significant Impact (FONSI) and supporting mitigation measures that will be taken.	Explains why an action will not have a significant effect on the human environment.	<ul style="list-style-type: none"> • A conclusion that an action will not have a significant effect on the environment. • Describes the proposed action, its purpose and need, and alternatives considered, including the no action alternative. • Assesses information necessary to support findings and determinations. • Describes applicable mitigation measures necessary to ensure that the preferred alternative will not significantly affect the environment and that are a condition of project approval. • Describes changes that have been made in the proposed action to eliminate significant impacts. • Includes statement of consistency or inconsistency with State, local, and Tribal, for impacts on a reservation, community planning. • Attaches the EA or a summary of the EA for reference. 	<ul style="list-style-type: none"> • Varies as appropriate (see 40 CFR 1501.4(e)(1) and 1506.6, and also CEQ's "40 Most Asked Questions," number 37). • In certain cases (e.g., actions similar to those normally addressed in an EIS or the nature of the proposed action is one without precedent), a 30-day public comment period is required before proceeding with action (see 40 CFR 1501.4(e)(2) and CEQ's "40 Most Asked Questions," number 38). • Agencies also must allow a period of public review of the FONSI, for example, if the proposed action would be located in a floodplain or wetland (E.O. 11988, section 2(a)(4), and E.O. 11990, Sec. 2(b)), or affect an eligible or listed historic property (36 CFR 800).

c. Internal Review Process and Approval

(1) FONSI's originating in the regions. The responsible FAA official will coordinate the review of the FONSI and underlying EA with affected program divisions and Regional Counsel. The responsible FAA official should contact affected program offices to obtain guidance on program office procedures for coordination. Upon request of the responsible FAA official, Regional Counsel may waive their review of the EA and FONSI for legal sufficiency. After appropriate coordination, the Division Manager or designee may approve the FONSI.

(2) FONSI's originating in the Washington, D.C. headquarters. The responsible FAA official will coordinate the review of the FONSI and underlying EA with affected program divisions, AEE, and AGC. The responsible FAA official should contact affected program offices to obtain guidance on program office procedures for coordination. Upon request from a Program or Office Director, AEE and AGC may waive their review. After appropriate coordination, the approving official may approve the FONSI.

(3) All FONSI's shall include the following approval statement:

After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101 of the NEPA and other

applicable environmental requirements and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of NEPA.

Approved: _____

Date: _____

d. Coordination

FONSI's are required to be coordinated outside of the agency for purposes of complying with special purpose environmental laws or administrative directives. Examples include but are not limited to actions involving section 404 of the Clean Water Act, section 4(f) of the DOT Act, section 106 of the National Historic Preservation Act, section 7 of the Endangered Species Act, section 307 of the Coastal Zone Management Act, section 176(c) of the Clean Air Act, section 7 of the Wild and Scenic Rivers Act, and the American Indian Religious Freedom Act. When a FONSI and any other associated required findings or determinations and their supporting documentation, if not previously submitted, are circulated to oversight agencies, for example to the State or Tribal Historic Preservation Officer for concurrence with findings required under section 106 of the National Historic Preservation Act, the FONSI and any other required findings or determinations should be accompanied by a cover letter identifying the purpose for which the information is being sent to the oversight agency, such as "in

compliance with section 106 of the National Historic Preservation Act."

e. Public Review in Special Circumstances

The responsible FAA official must determine whether any of the following circumstances apply, and if so, allow for the appropriate amount of public review.

(1) The CEQ regulations (40 CFR 1501.4(e)(2); see also CEQ's "40 Most Asked Questions," number 37b) provide that in certain limited circumstances the agency shall make the FONSI available for public review for 30 days before the agency makes its final determination whether or not to prepare an EIS and before the action may begin. The 30-day public review period may run concurrently with any other Federally review. These circumstances are:

(a) The proposed action is, or is closely similar to, one normally requiring the preparation of an EIS.

(b) The nature of the proposed action is one without precedence.

(2) When the action involves special purpose environmental laws, regulations, or executive orders which require public notice of specific findings or determinations apart from the FONSI made under NEPA. Examples include but are not limited to section 2(a)(4) of E.O. 11988, Floodplain Management, section 2(b) of E.O. 11990, Protection of Wetlands, section 7 of the Endangered Species Act, section 106 of the National Historic Preservation Act.

f. Distribution

The FONSI and EA are filed in the office of the responsible FAA official. A copy of the FONSI and EA shall be sent to the affected program offices, if required by those offices. A copy of the FONSI and EA shall also be sent to any reviewing agencies, organizations, or individuals that had substantive comments.

g. Public Availability

The CEQ regulations state that Federal agencies shall make FONSI's available to interested or affected persons or agencies (see 40 CFR 1506.6). Methods of announcing the availability of a FONSI, such as publication in local newspaper or notice through local media, are described in 40 CFR 1506.6(b). The announcement will indicate locations at which the FONSI and its associated EA are available and other appropriate locations of general public access. Copies of FONSI's and associated EAs will be provided, on request, free of charge or at a fee commensurate with the cost of reproduction.

407. Monitoring Mitigation

Mitigation and other conditions established in the EA and FONSI, or during their review, and included as a condition of the project approval or licensing shall be implemented by the lead agency or other appropriate consenting agency. The FAA shall take steps through grant agreements, licenses, contract specifications, operating specifications, directives, other project review or implementation procedures, or other appropriate mechanisms to monitor implementation of mitigation set forth in the approved EA/FONSI. Mitigation included as special conditions in the FONSI can be imposed as enforceable conditions of the final decision or of funding or grant agreements, contract specifications, preferential arrival and departure procedures, licenses, permits, directives, other project review or implementation procedures, or other appropriate follow-up actions to ensure that mitigation is implemented (see CEQ's "40 Most Asked Questions," number 39).

408. Decision Documents for Findings of No Significant Impact

a. Immediately following the approval of a FONSI, except in the circumstances identified in paragraph 406e, the FAA decisionmaker may decide whether to take the proposed action. Mitigation measures which were made a condition of approval of the FONSI and the steps taken to assure appropriate commitment

and follow-up of mitigation measures shall be included in the FONSI and incorporated in the decision to implement the action. If the FAA decides to proceed with the proposed Federal action, then the decision may be included with the FONSI or in a separate decision document, sometimes called a ROD or FONSI/ROD.

Preparation of a record of decision to proceed with an action for which a FONSI has been approved is optional. A record of decision is recommended in the circumstances described in paragraph 408b. If the responsible FAA official prepares a record of decision, it should include a description of the action, the location and timing of the action, the FONSI, any other required findings or determinations, and the signature, name, title, address, and telephone number of the approving FAA official.

b. The responsible FAA official should prepare formal documentation of the decision to proceed (e.g., a record of decision (ROD) or FONSI/ROD) for:

(1) Actions which have been redefined to include mitigation measures necessary to reduce potentially significant impacts below applicable significant thresholds (see paragraph 405g).

(2) Actions that are highly controversial.

(3) Actions that are, or are closely similar to, those normally addressed in an EIS (see paragraph 406e).

(4) Actions that have no precedent (see paragraph 406e).

In cases of doubt, the responsible FAA official should consult the Environmental Law Branch (AGC-620) of the Office of the Chief Counsel or Regional Counsel.

409. Tiering and Programmatic Environmental Assessments

The concept of tiering for EISs may be used for preparing EAs. The responsible FAA official may tier off completed EAs and EISs if the responsible FAA official after finding that these are current and meet FAA requirements. Permitting and review agencies may have independent requirements for review of previously prepared documents (see paragraph 513).

410. Written Reevaluation

The procedures in paragraph 515 may also be applied to EAs.

411. Revised or Supplemental Environmental Assessments or FONSI's

The procedures in paragraph 519 may also be applied to EAs.

412. Review and Adoption of EAs Proposed by Other Agencies

See paragraphs 404d, 404g and 518.

413.-499. Reserved

Chapter 5. Environmental Impact Statements and Records of Decision

500. Introduction

a. This chapter summarizes and supplements CEQ requirements for Environmental Impact Statements (EISs) and Records of Decision (RODs). EISs and RODs are summarized as follows:

(1) An EIS is a clear, concise, and detailed document that provides the agency decisionmakers and the public with a full and fair discussion of significant environmental impacts of the proposed action (40 CFR 1502.1) and implements the requirement in NEPA section 102(2)(C) for a detailed written statement. Using an interdisciplinary approach (40 CFR 1501.2(a)), an EIS describes the purpose and need of the proposed action (40 CFR 1502.13), the affected environment (40 CFR 1502.15), and, in a comparative form, the environmental effects of the alternatives, including the proposed action, the no action alternative, and other reasonable alternatives (including those not within the agency's jurisdiction (40 CFR 1502.14(c)) and those that would avoid or minimize adverse impacts (40 CFR 1502.13 and 1502.14)). The discussion must be in adequate detail so that the environmental effects can be compared to economic and technical analyses (40 CFR 1501.2(b)). An EIS discusses means to mitigate adverse environmental impacts if not covered in the discussion of alternatives (40 CFR 1502.14(f)) and identifies unavoidable impacts (40 CFR 1502.16). For each alternative and mitigation measure, an EIS also discusses the energy and natural resources requirements, urban quality, historic and cultural resources, and the design of the built environment, and the potential for reuse and conservation of these resources (40 CFR 1502.16(e) through (g)). An EIS identifies possible 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 (40 CFR 1502.17(c)), and the extent to which the agency would reconcile its proposed action with the plan or law (40 CFR 1506.2(d)). If reasonable alternatives are eliminated from detailed study, the EIS briefly discusses the reasons why these alternatives were eliminated (40 CFR 1502.14(a)). The EIS identifies the

agency-preferred alternative or alternatives in the draft EIS if a preferred alternative exists and in the final EIS unless prohibited by law (40 CFR 1502.14(e)). An EIS identifies methodologies and sources used (40 CFR 1502.24), identifies where information is incomplete or unavailable (40 CFR 1502.22), lists the preparers (40 CFR 1502.17), lists the agencies, organizations, and persons to whom copies of the EIS are sent (40 CFR 1502.10(i)), and summarizes the major conclusions, areas of controversy (including issues raised by agencies and the public), and issues to be resolved (40 CFR 1502.12)). The final EIS also includes the agency's response to comments (40 CFR 1502.9(b) and 1503).

(2) A ROD (40 CFR 1505.2) is concise public record of decision, which may be integrated into any other record prepared by the agency. The ROD states what the decision is; identifies all alternatives considered in reaching the agency's decision, specifying which were environmentally preferable. The ROD discusses all other relevant factors considered, including any essential considerations of national policy, economic and technical considerations, and the agency's statutory mission. The ROD states whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why not. Where applicable, the ROD may include a monitoring and enforcement program for mitigation. Grants, permits, or other approvals and decisions to fund of agency actions on implementation of the selected mitigation include conditions requiring implementation of the mitigation measures that were adopted by the agency in making its decision (40 CFR 1505.3(a) through (b)).

b. The depth of analysis and documentation of impacts will be in direct proportion to the potential significance of the impacts. EISs should give greater emphasis to significant impacts and less emphasis to insignificant impacts. A significant impact is identified generally through the scoping process, through analysis of the direct, indirect, and cumulative effects of the proposed action, and in comparison with the threshold of significance for each impact category. As in an EA, the discussion in an EIS of insignificant impacts is generally limited to an explanation of why further analysis of these impacts is not warranted. See 40 CFR 1500.4(g) (Reducing paperwork), 1501.1(d) (Purpose), and 1501.7 (Scoping).

c. An EIS is required not only when the impact of the proposed action itself

is significant, but also when the cumulative impact of the proposed action and any connected agency actions or other past, present, and reasonably foreseeable future actions, whether Federal or non-Federal, is significant (see 40 CFR 1508.7, 1508.8, 1508.25, and 1508.27(b)(7) and CEQ guidance for Considering Cumulative Effects Under the National Environmental Policy Act, January 1997). A series of actions, when assessed on an individual basis, may each have a limited environmental impact. However, the same series of actions may have a significant cumulative impact when assessed together and with other Federal or non-Federal actions that are ongoing or are reasonably foreseeable (40 CFR 1508.7 and 1508.27(b)(7)).

(1) Connected action should be considered in the same EIS. Connected actions are those actions that automatically trigger other actions which may require environmental impact statements, cannot or will not proceed unless other actions are taken previously or simultaneously, or are interdependent parts of a larger action and depend on the larger action for their justification (40 CFR 1508.25(a)(1)). Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts (40 CFR 1508.27(b)(7)). Proposed actions or parts of proposed actions which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement (40 CFR 1508.24(a)).

(2) Cumulative actions should also be discussed in the same EIS. Cumulative actions and those actions which when viewed with other past, present, and reasonably foreseeable future actions, whether Federal or non-Federal, have cumulatively significant impacts (40 CFR 1508.25(a)(2)).

(3) Similar actions, such as those with common timing or geography, may be considered in a broad EIS, sometimes called a "programmatic" EIS, when the best way to assess their combined impacts or reasonable alternatives to such actions is in a single impact statement (40 CFR 1502.4(b) through (c) and 1508.25(a)(3)).

(4) CEQ regulations permit "tiering" from broad EISs to subsequent narrower or site-specific EISs or EAs or from an EIS on a specific action at an early stage to a supplement or subsequent EIS or EA at a later stage (40 CFR 1502.4(c)(3) and 1508.28). See paragraph 513.

d. In cases of doubt as to whether an EIS is necessary for a particular action, the responsible FAA official should consult with the AGC, Regional

Counsel, or AEE. Airports personnel should contact APP-600.

501. Actions Requiring Environmental Impact Statements (EIS)

An EIS shall be prepared for major Federal actions significantly affecting the quality of the human environment. The term "major" reinforces but does not have a meaning independent of "significantly" (40 CFR 1508.18). Significance is defined in terms of context and intensity (40 CFR 1508.27). Paragraphs 400 and 402 list actions normally requiring an EA.

a. If the analysis in the EA of environmental impact categories discussed in appendix 1 indicates that impacts will be significant, then the responsible FAA official would prepare an EIS and the EA may be used in the scoping process described below; however, if the responsible FAA official has decided to prepare an EIS, an EA need not be prepared.

b. The addition of mitigation to reduce impacts below significance does not necessarily avoid the requirement to prepare an EIS. However, if mitigation is integrated into the design of the proposed action, or if, through scoping or the EA process, the proposed action is redefined to include mitigation, then the responsible FAA official may rely on the mitigation measures in determining that the overall effects would not be significant and prepare an EA/FONSI. In that event, the responsible FAA official must circulate the EA/FONSI for public and agency comment for 30 days (CEQ's 40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR 1500-1508), number 40, 46 FR 18026, March 23, 1981).

c. After an EA has been prepared an EIS shall be prepared if the FAA action:

(1) Has a significant adverse effect on cultural resources pursuant to the National Historic Preservation Act of 1966, as amended.

(2) Results in significant use on properties protected under section 4(f) of the Department of Transportation Act.

(3) Has a significant impact on natural, ecological (e.g., invasive species), or scenic resources of Federal, Tribal, State, or local significance (including, for example, Federally listed or proposed endangered, threatened, or candidate species or designated or proposed critical habitat under section 7 of the Endangered Species Act, resources protected by the Fish and Wildlife Coordination Act, wetlands under section 404 of the Clean Water Act, section 10 of the Rivers and Harbors Act, and E.O. 11988,

floodplains under E.O. 11990, coastal resources under the Coastal Zone Management Act and Coastal Barriers Act, prime, unique, State or locally important farmlands under the Federal Farmlands Protection Act, energy supply and natural resources, and wild and scenic rivers, study or eligible river segments under the Wild and Scenic Rivers Act) and solid waste management.

(4) Causes substantial division or disruption of an established community, or disrupt orderly, planned development, or is likely to be not reasonably consistent with plans or goals that have been adopted by the community in which the project is located.

(5) Causes a significant increase in congestion from surface transportation (by causing decrease in Level of Service below acceptable level determined by appropriate transportation agency, such as a highway agency).

(6) Has a significant impact on noise levels of noise-sensitive areas.

(7) Has a significant impact on air quality or violate local, State, Tribal, or Federal air quality standards under the Clean Air Act Amendments of 1990.

(8) Has a significant impact on water quality, sole source aquifers, contaminate a public water supply

system, or violate State or Tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

(9) Is inconsistent with any Federal, State, Tribal, or local law relating to the environmental aspects of the proposed action.

(10) Directly or indirectly creates a significant impact on the human environment, including, but not limited to, actions likely to cause a significant lighting impact on residential areas or commercial use of business properties, likely to cause a significant impact on the visual nature of surrounding land uses (see sections 11 and 12, appendix 1 for additional information), is contaminated with hazardous materials based on Phase I or Phase II Environmental Due Diligence Audit (EDDAs), or causes such contamination (see section 10, appendix 1 for additional references and discussion).

502. Impact Categories

The responsible FAA official should review appendix 1 to identify the level of analysis needed in the EIS for each applicable environmental impact category. The responsible FAA official should include in the EIS, under appropriate impact categories, all applicable permit or license

requirements. The EIS also will report on the status of any special consultation required, such as consultation under the Endangered Species Act, the National Historic Preservation Act, the Fish and Wildlife Coordination Act, Archeological Resources Protection Act, or American Indian Religious Freedom Act. These reviews should occur concurrently. The level of analysis for categories not significantly impacted should be similar to the level of analysis in an EA (see paragraph 404c). These impacts will be discussed in as much detail as is necessary to support the comparisons of alternatives and agency decisionmaking. Many of the impact categories listed in appendix 1 are interrelated, and, therefore, the responsible FAA official should first review the impact category of concern and then the remaining related categories for guidance.

503. Environmental Impact Statement Process

When the determination has been made that the action does have potential significant impacts, the preparation of the EIS will begin. Figure 5-1, Environmental Impact Statement Process, presents an overview of the EIS process.

Figure 5-1. Environmental Impact Statement Process

- Step 1—Responsible FAA official or applicant defines proposed action.
- Step 2—Responsible FAA official or applicant collects background data and analyzes the information.
- Step 3—Responsible FAA official determines need for EIS (anticipated significant impact).
- Step 4—Responsible FAA official prepares and publishes Notice of Intent (NOI) in **Federal Register** and local press.
- Step 5—Responsible FAA official initiates EIS scoping activities and determines issues and alternatives to be addressed.
- Step 6—Responsible FAA official prepares draft EIS, distributes it to other agencies and public, and files copy with EPA.
- Step 7—Responsible FAA official receives and evaluates comments (90-day period). Comment periods may be extended by agency.
- Step 8—Responsible FAA official prepares final EIS, distributes it to other agencies and public, and files copy with EPA.
- Step 9—30-day waiting period unless the final EIS is filed within 90 days after a DEIS is filed with the EPA, in which case the 30-day and 90-day periods may run concurrently but must not be less than 45 days, subject to a 30-day request for extension by EPA. Comment periods may be extended by agency.
- Step 10—Approving FAA official issues ROD and proceeds with action, mitigation, and monitoring.

504. Notice of Intent

Once the decision is made to proceed with an EIS, the responsible FAA official publishes a Notice of Intent (NOI) in the **Federal Register**. The NOI is an announcement that an EIS will be prepared. Figure 5-2, Notice of Intent and Notice of Availability Overview, shows that a NOI will include an overview of the proposed action; the alternatives being considered (including the no action); and the name and address of a person within the agency who can answer questions about the proposed action and the EIS (see 40 CFR

1508.22). If a scoping meeting is being planned (see paragraph 505 regarding scoping) and sufficient information is available at the time, the NOI should also announce the meeting, including the time and place of the meeting, and any other appropriate information, such as the availability of a scoping document. Otherwise, the scoping meeting may be announced separately. If the responsible FAA official is using the NOI to satisfy public notice and comment requirements of other environmental laws, regulations, or executive orders in addition to NEPA,

the NOI should include a statement to that effect with a reference to the specific law, regulation, or executive order. The responsible FAA official should consider also publishing the NOI, notices of scoping meetings, and other information in other formats pursuant to Order DOT 5610.1C, paragraph 14a and CEQ regulations section 1506.6.

a. The responsible FAA official sends the NOI, the original and three copies, to the docket clerk in the Office of the Chief Counsel (AGC-200). All NOIs initiated in the regions should be

reviewed by the Regional Counsel before being forwarded to AGC-200. The applicable division manager or

designee may sign the NOI for the **Federal Register**.
b. After publishing the NOI, the responsible FAA official selects the

environmental review team and develops the EIS outline, schedule, and management framework.

Figure 5-2. Notice of Intent and Notice of Availability Overview

Purpose	Content	Public Participation
<ul style="list-style-type: none"> • Notice of Intent (NOI) announces to the public that the EIS process has begun for a proposed FAA action. • If appropriate, the NOI announces the availability of a scoping document (document is optional). • The NOI announces the scoping meeting, if one is planned and the details of time and place are known; otherwise, if and when a scoping meeting is scheduled, a separate notice is published at least 30 days in advance of the meeting. • Notice of Availability (NOA) announces the availability of a DEIS or an FEIS. 	<ul style="list-style-type: none"> • Describes: <ul style="list-style-type: none"> • Proposed action and possible alternatives. • Proposed scoping process including whether, when, and where any scoping meeting will be conducted. • States an FAA point of contact for public inquiries. • Announces the availability of the DEIS and FEIS. • Provides information about where to review copies and send comments. 	<p>The FAA publishes the NOI in FEDERAL REGISTER and local press.</p> <ul style="list-style-type: none"> • An NOI or other notice of a scoping meeting must be published at least 30 days prior to the meeting. <ul style="list-style-type: none"> • EPA drafts and publishes the NOA in FEDERAL REGISTER. • FAA publishes NOA in local press.

505. Scoping

a. Scoping is an early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action (40 CFR 1501.7). It is an important and required, part of the EIS process. The purpose of scoping is to identify significant environmental issues to be analyzed in greater depth, de-emphasize issues that are significant or which have been covered by prior environmental review, and set the temporal and geographic boundaries of the EIS. Scoping also allows the responsible FAA official to identify available technical information and additional reasonable alternatives. More importantly, information obtained from scoping can be used to insure that planning and decisions reflect environmental values and that delays and conflicts are reduced later in the process. A scoping meeting often will be appropriate when the impacts of a particular action are confined to specific sites. There are no requirements for a scoping meeting or for a specific number of meetings. Depending on the nature and complexity of the action, some or all of the information needed during the scoping process may be obtained by letter, telephone, or other means (see Appendix 1, Analysis of Environmental Impact Areas, and Appendix 5, Council on Environmental Quality Scoping Guidance. If an EA has been prepared, the responsible FAA official may use it as the vehicle for scoping. Alternatively, the responsible FAA official may prepare a scoping document. A scoping document is

extremely useful if the scoping is done by mail or telephone, or the proposed action's location or locations are so remote, scattered, or widespread that affected agencies and other interested persons are unable to visit the site or sites.

b. The responsible FAA official must take the lead in the scoping process, inviting the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the applicant of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), determining the issues to be analyzed in depth, identifying other environmental review and consultation requirements, and assigning responsibilities among lead and cooperating agencies for inputs to the EIS. If appropriate, a scoping meeting(s) will be held. Public notice of 30 days should be required for a public meeting(s) or hearing(s). At the scoping meeting, the FAA provides additional background on the action and then solicits input from those interested and affected parties attending to:

- (1) Determine the scope of analysis required within the EIS;
- (2) Identify and eliminate insignificant issues and those covered in previous environmental reviews;
- (3) Identify reasonable alternatives not previously addressed; and
- (4) Indicate any other EAs or EISs that have been conducted or are planned and which are related to but not part of the action under consideration.

c. Local units of governments, and pertinent Federal, Tribal, and State agencies should be consulted early in

the process of preparing an EIS. Where access, intermodal transfer, or other ground transportation issues are involved, consultation with the appropriate metropolitan planning organization or State Department of Transportation and compliance with State Implementation Plans under the Clean Air Act (CAA) is important. Comments on the impacts of the proposed action will be considered, as appropriate, in determining whether the proposed action requires an EIS and in preparing the EIS. Consultation with appropriate agencies also is initiated at this point.

506. EIS Format

The FAA's standard EIS format, which follows the format prescribed in CEQ regulations (40 CFR 1502.10), is outlined below. An overview is presented in Figure 5-3, Environmental Impact Statement Overview.

a. Cover Page

This single page will include:

- (1) A list of the responsible agencies (identifying the lead agency);
- (2) The title of the proposed action (together with the State(s) and county(ies) where the action is located);
- (3) The name, address, and telephone number of the responsible FAA official;
- (4) The designation of the statement as draft, final, or supplement;
- (5) A one paragraph abstract of the EIS with a heading as follows:
DEPARTMENT OF
TRANSPORTATION, FEDERAL
AVIATION ADMINISTRATION; and
- (6) For DEISs, a statement that this EIS is submitted for review pursuant to

the following public law requirements and list those that are applicable, such as section 102(2)(C) of the National Environmental Policy Act of 1969, section 4(f) of the Department of Transportation Act of 1966.

b. Executive Summary

An executive summary will be included to adequately and accurately summarize the EIS. The summary describes the proposed action, stresses the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). It also discusses major environmental considerations and how these have been addressed, summarizes the analysis of alternatives, and identifies any environmentally preferred, agency preferred and sponsor preferred alternatives. It discusses mitigation measures, including planning and design to avoid or minimize impacts. It identifies interested agencies, lists permits, licenses, and other approvals that must be obtained, and reflects complied with other applicable environmental laws, regulations, and executive orders.

c. Table of Contents

The table of contents lists the chapters, figures, maps, tables, and exhibits presented throughout the EIS. It will also list the appendixes, if any, and the list of acronyms, glossary, references, an index, and an errata page.

d. Purpose and Need

This section defines the proposed action and briefly specifies the underlying purpose and need to which the agency is responding in proposing the alternatives, including the proposed action. It presents the problem being addressed by the proposed action, how the alternatives would resolve the problem, and the benefits of the proposed action. It distinguishes between the need for the proposed action and the desires or preferences of the agency or applicant, and essentially provides the parameters for defining a reasonable range of alternatives to be considered.

e. Alternatives, Including the Proposed Action

This section is the substantive part of the EIS (see 40 CFR 1502.14; see also 40 CFR 1502.10(e) and paragraph 405d for more information on alternatives). It presents a comparative analysis of the no action alternative, the proposed action, and other reasonable alternatives to fulfill the purpose and need for the action. It identifies the environmentally

preferred alternatives in accordance with CEQ regulations. Alternatives not within the jurisdiction of the lead agency, but within the jurisdiction of the Federal government, should be considered. To provide a clear basis of choice among the alternatives, graphic or tabular presentation of the comparative analysis is recommended. This section also presents a brief discussion of alternatives that were not considered and the rationale for not analyzing them in further detail. The premise for this rationale should be framed in terms of alternatives that are not reasonable due to their inadequacy in meeting the purpose and need for the proposed action. Environmentally preferred alternatives are identified based on the information and analysis presented in the affected environment and environmental consequences sections of the EIS. The FEIS must identify the preferred alternative if it is other than an environmentally preferred alternative. Other criteria may be applied to select the preferred alternative.

f. Affected Environment

This section describes the existing environmental conditions of the potentially affected geographic area or areas. The discussion of the affected environment will be no longer than is necessary to understand the effects of the alternatives; data and analyses should be presented in detail commensurate with the importance of the impact. This section describes other related activities (past, present or reasonably foreseeable future actions), their interrelationships, and cumulative impacts. It may include such items as action by the community or citizen groups pertinent to the proposed action, or any other unique factors associated with the action. (See paragraph 405e for other factors that may be included in the affected environment discussion.)

g. Environmental Consequences

(1) This section forms the scientific and analytical basis for comparing the proposed action and alternatives. The discussion of environmental consequences will include the environmental impacts of the alternatives including the proposed action; any adverse environmental effects which cannot be avoided should the proposed action be implemented; the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be

implemented. This section should not duplicate discussions in the alternative section. It shall include considerations of direct and indirect effects and their significance and possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of an Indian reservation, Tribal) land use plans, policies and controls for the area concerned (see CEQ's "40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR 1500-1508)," number 23, 46 FR 18026, March 23, 1981 and paragraph 405f).

(2) Specific environmental impact categories listed in appendix 1 shall be discussed to the level of detail necessary to support the comparisons of alternatives. Impacts shall be analyzed for each alternative, including the proposed action which is treated in detail in this section of the EIS. The section shall include, under appropriate impact categories, all applicable permit or license requirements and shall indicate any known problems with obtaining them. This section shall also provide the status of any interagency or intergovernmental consultation required, for example, under the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, the American Indian Religious Freedom Act, E.O. 13084, Government-to-Government Consultation with Indian Tribal Governments, the Wild and Scenic Rivers Act, and the Fish and Wildlife Coordination Act.

h. Mitigation

(1) An EIS describes mitigation measures considered or planned to minimize harm from the proposed action. The following types of mitigation measures will be considered: design and construction actions to avoid or reduce impacts; design measures that reduce impacts; management actions that reduce impacts during operation of the facility; and replacement, restoration, and compensation measures.

(2) An EIS describes alternative mitigation measures and identifies any that the FAA has decided to include as part of the proposed action. Mitigation and other conditions established in the EIS, or during its review of the EIS, and committed as part of the decision will be implemented by the lead agency or other appropriate consenting agency. The FAA ensures implementation of such mitigation measures through special conditions, funding agreements, contract specifications, directives, other review or implementation procedures,

and other appropriate follow-up actions in accordance with 40 CFR 1505.3. Monitoring or other follow-up review should also be described. See paragraph 404g for additional information.

i. List of Preparers

This list includes the names, and qualifications (e.g., expertise, experience, professional disciplines) of the FAA that were primarily responsible for preparing the EIS or significant background material, with credit to any contractors who assisted in preparing the EIS or associated environmental studies.

j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent

This list is included for reference and to demonstrate that the EIS is being

circulated, and thus, that the public review process is being followed.

k. Index

The index reflects the key terms used throughout the EIS for easy reference. The index includes page numbers for each reference.

l. Appendices (if any)

This section consists of material that substantiates any analysis that is fundamental to the EIS, but would substantially contribute to the length of the EIS or detract from the document readability, if included in the body of the EIS. This section should contain information about formal and informal consultation conducted, and related agreement documents prepared, pursuant to other applicable

environmental laws, regulations, and executive orders.

m. Comments

Comments received on the DEIS are assessed and responded to in the FEIS in any or all of the following ways:

- (1) Written into the text of the FEIS.
- (2) Stated in an errata sheet attached to the FEIS.
- (3) Included or summarized and responded to in an attachment to the FEIS, and if voluminous, may be compiled in a separate supplemental volume for reference.

n. Footnotes

Footnotes include title, author, date of document, page(s) relied upon, and footnote number used to identify where in the text, figures, and charts of the EIS the source is used.

Figure 5-3.—Environmental Impact Statement Overview

Purpose	Scope	Content	Public participation
<ul style="list-style-type: none"> Provides an in-depth review of the environmental impacts for all major FAA actions before a decision is made. Examines alternatives and the potential for mitigating impacts associated with those alternatives. Discloses to the public and the decisionmaker the alternatives, impacts, and mitigations. 	<p>Provides a comprehensive review of all impacts of the proposed action and alternatives, including the no action alternative.</p>	<p>Includes the following:</p> <ul style="list-style-type: none"> Cover sheet Executive Summary Table of Contents Purpose of and need for action Alternatives considered, including proposed action Affected environment (baseline conditions) Environmental consequences of alternatives Coordination—includes list of agencies, organizations and persons to whom copies of the EIS are sent List of preparers Index Appendices Summary of public comments on DEIS Exceptions are permitted if the responsible FAA official determines that there is a compelling reason to change the standard format. 	<ul style="list-style-type: none"> Provides for a 45-day public comment period on the DEIS. If necessary, a public hearing on the DEIS should occur within 30 days of issuance. Provides for a 30-day waiting period on the FEIS prior to issuance of the ROD.

507. Timing of Actions

The comment period for a DEIS is 90 days from the date of filing with EP; however, if the FEIS is filed within the 90-day period, the comment period can be reduced to not less than 45 days. Thus, a comment period of at least 45 days for public review is required (see 40 CFR 1506.10(c)). If a public hearing or public meeting is held, the timeframe includes 30 days for review of the DEIS, prior to the public hearing, and 15 days to allow for comments following the public hearing. The number of days is determined from the date that the NOA is available for review by the public (e.g., newspaper, **Federal Register**). EPA

may receive a 30-day extension of prescribed periods upon request to the lead agency, or may upon a showing by the lead agency of compelling reasons of national policy reduce or, after consultation with the lead agency, extend prescribed periods. The lead agency may also grant extensions upon written request by the public.

508. Draft EIS

A DEIS is prepared using the format outlined in paragraph 506.

a. Internal Review

The responsible FAA official should plan for internal review of DEISs. For DEISs originating in the regions, the

preliminary DEIS or its relevant parts will be reviewed by affected regional program divisions and Regional Counsel before publication, distribution, and filing the DEIS with EPA for public review. For DEISs originating in headquarters, have national interest, or involve 4(f) determinations, the preliminary DEIS will be reviewed by AGC. Internal review is to assure that DEISs are technically and legally sufficient. Internal review is intended to assure that the concerns of other FAA offices and any related foreseeable agency actions by other FAA offices are properly discussed in the DEIS. Further, internal review is intended to assure

that any commitments that are the responsibility of other FAA offices are coordinated with the appropriate action office so that these commitments will be implemented.

b. Filing With EPA

The responsible FAA official files the DEIS with the EPA (see 40 CFR 1506.9). The EPA will subsequently publish a NOA in the **Federal Register**, which will begin the 90-day period after which the Federal action can be taken. EPA's Office of Federal Activities (OFA) has the responsibility for the EIS filing process.

a. Send five copies of the DEIS to the EPA's Office of Federal Activities (OFA).

(1) When using the regular United States mail service, send to: U.S. Environmental Protection Agency, Office of Federal Activities, NEPA Compliance Division, EIS Filing Section, Mail Code 2252-A, 401 M Street, SW, Washington, D.C. 20460.

(2) When sending the FEISs by special delivery (Federal Express, United Parcel Service, etc.) or hand carrying FEISs to the OFA, the address is: U.S. Environmental Protection Agency, Office of Federal Activities, NEPA Compliance Division, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7241, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20044.

c. Public Notice

Public notice by the responsible FAA official is planned and executed to assure that press releases, official notices, or other appropriate media announce to the public that a DEIS has been prepared and is being circulated and that comments on the document are being solicited. The announcement contains information on the availability of the DEIS and should be distributed to local media concurrent with distribution for notice in the **Federal Register** with request for immediate publication and other appropriate media coverage. The following standard language should be used concerning public comments in **Federal Register** notices announcing the availability of DEISs for public comment and any public hearings (also for any FEISs whose availability FAA announces in the **Federal Register**):

All persons interested in the proposed action are encouraged to comment. Comments should be as specific as possible and may address the adequacy of the proposed action or the merits of the alternatives and mitigation being considered. In addition, Federal court decisions have established that

reviewers of EISs must structure their participation so that it is meaningful and alerts an agency to the reviewer's positions and contentions.

Environmental objections that could have been raised may be waived if not raised before the FEIS is issued. This ensures that substantive comments and objections are made available to the FAA in a timely manner so that the FAA can respond to them.

See also paragraph 208 for additional information on public involvement.

d. Distribution and Coordination for Intergovernmental Review

(1) According to CEQ regulations, comments on the DEIS shall be obtained from or requested of appropriate Federal, State, and local agencies, and Tribal governments (40 CFR 1501.2(d)(2) and 1501.7(a)(1)), and from Tribal governments when the effects may be on a reservation (40 CFR 1502.16(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii)). A Federal agency may include State, local, or Tribal governments which have assumed NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974 (40 CFR 1508.12). Summaries of DEISs can be put up on CEQ's home page (<http://ceq.eh.doe.gov/>). All DEISs will be coordinated with the appropriate regional offices of other Federal agencies having jurisdiction by law or special expertise. However, DEISs that are coordinated with any component of the Department of the Interior (DOI), Department of Commerce (DOC), or Department of Energy (DOE) will be coordinated with the Washington, D.C., headquarters of those departments. Coordination with the DOE is necessary only for transportation proposals having major energy-related consequences. See paragraph 210 for additional information on interagency and intergovernmental review of EISs.

(2). Copies of the DEIS will be sent to:

(a) Federal, State, and local agencies, and Tribal governments when the effects may be on a reservation.

(b) Washington, D.C., headquarters of the Department of Commerce (one copy) and Ecology and Conservation Division of the National Oceanographic and Atmospheric Administration (NOAA) (one copy)

(c) Washington, D.C., headquarters of the Department of Energy, if coordination is necessary (see paragraph 508d(1)) (one copy)

(d) Department of the Interior, Office of Environmental Policy and Compliance (12 to 18 copies of the DEIS depending on the proposed action's geographic location and scope)

(e) EPA headquarters (five copies) and the applicable EPA regional office (five copies)

(f) P-1 (one copy), AEE (one copy), AGC or designee (one copy), the service director, other appropriate DOT and FAA offices;

(g) proposed action;

State and local agencies and Tribal governments (see paragraph 212 on intergovernmental and interagency coordination and consultation), including cooperating agencies, agencies that commented substantively on the Intergovernmental Review of Federal Programs, the Advisory Council on Historic Preservation for actions using 106 process, affected cities and counties, and others known to have an interest in the action (see paragraph 208 on public involvement). For example, various laws, regulations, and executive orders in addition to NEPA, may also require coordination with American Indian and Alaska Native tribes and Native Hawaiian organizations that are not Federally recognized, and with traditional cultural leaders. Consult with AEE, AGC, and the Office of Civil Rights (ACR) and see appendix 1, especially section 11 on cultural resources, for more information.

f. Copies

Copies should be printed by the responsible FAA official in sufficient quantities to meet anticipated demand for the DEIS. A fee, not to exceed reproduction costs, may be charged for copies requested by the public if the original set of copies is exhausted. The DEIS should be available at local libraries or similar public depositories having extended office hours to facilitate accessibility. Material used in developing or referenced in the DEIS must be available for review at the appropriate FAA office(s) or at a designated location.

g. Comment Period

See paragraph 507.

h. Comments

The responsible FAA official must take into consideration all comments received from the public and respond to the substantive comments in the FEIS, as discussed in paragraph 506m. Any comments on the DEIS from the public, including comments made during public hearings (see paragraph 208), will accompany the FEIS through the normal internal review process. In preparing the FEIS, the DEIS will be revised, as appropriate, to reflect comments received, issues raised through the community involvement and public hearing process, or other

considerations. Copies of all substantive comment will be included in the FEIS or as a separate, accompanying appendix. If the number of comments is too voluminous to include, the comments may be summarized. Relevant environmental documents, comments, and responses are part of the agency's public record and will be made available to the public through appropriate regional office procedures.

(1) Comments from EPA on the DEIS are categorized according to the following criteria:

- (a) Lack of Environmental Objections (LO);
- (b) Environmental Concerns (EC);
- (c) Environmental Objections (EO); or
- (d) Environmental Unsatisfactory (EU).

(2) The statement adequacy also is categorized by EPA as:

- (a) Adequate (1);
- (b) Insufficient Information (2); or
- (c) Inadequate (3).

509. Review and Approval of FEIS

It is during the EIS process that environmental issues are defined and mitigation determined. Any unresolved environmental issues and efforts to resolve them through further consultation will be identified and discussed in the FEIS. The FEIS will reflect that there has been compliance with the requirements of all applicable environmental laws, regulations, executive orders, and agency orders, such as section 4(f) of the DOT Act. If such compliance is not possible by the time of FEIS preparation, the FEIS will reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met. CEQ regulations, however, strongly encourage early integration of these processes to provide for meaningful public comment and to streamline environmental review and permitting or approval processes.

a. Internal review is coordinated as follows:

(1) FEISs originating in headquarters. The office or service director shall send a copy of the FEIS to AEE and AGC to review for legal sufficiency and concurrence. After the office or service director approves the FEIS, the responsible FAA official will file it with EPA (see paragraphs 509a(6) and 512).

(2) FEISs originating in the fields, and not subject to headquarters' concurrence. The Regional Administrator or Center Director, or designee, shall approve and file the FEIS with EPA, following review for legal sufficiency by the Regional Counsel and concurrence.

(3) FEISs originating in regions or centers, but when headquarters concurrence is requested. The Regional Administrator or Center Director, or designee, shall approve the FEIS and submit it to the appropriate service or office director. Following approval, the FEIS will be filed with EPA (see paragraph 510a(2)).

(4) FEISs originating in regions or centers, but where authority to approve the FEIS is retained in headquarters. The applicable division manager or center shall send the proposed FEIS to the appropriate headquarters' office or service director. The office or service will provide the FEIS to AGC and AEE for review. Following approval, the FEIS will be filed with EPA. Presently, approval for these types of FEISs is being delegated, if comments on the DEIS have been incorporated.

(5) FEISs involving mandatory findings involving section 4(f), wetlands, floodways or floodplains, air quality, historic and archeological resources protected by section 106, and Federally listed endangered and threatened species. These FEISs are subject to legal review for legal sufficiency in headquarters or in the region where the environmental document is to be approved.

(6) For highly controversial FEISs requiring headquarters' review and concurrence. The Office of the Assistant Secretary for Transportation Policy (P-1) and the DOT Office of General Counsel (C-1) will be notified that the FEIS is under review and be provided with a copy of the summary section contained in the FEIS. P-1 and C-1 also will be given at least two weeks notice before approval of the highly controversial FEIS.

b. FEIS Approval

(1) The following declaration shall be added to the summary:

After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1969.

Other required environmental findings and conclusions must be included here, if not included in the body, or at the end of, the EIS.

(2) Signature and date blocks will be provided for the decisionmaker's approval and may also be provided for

the concurrences of other appropriate offices.

510. Notice of Availability of FEIS

When the lead agency files the FEIS with the EPA, the EPA prepares and publishes a NOA. The FAA can make a final decision to act no sooner than 30 days after the EPA notice of filing is published in the **Federal Register** (40 CFR 1506.10). EPA may obtain a 30-day extension. The responsible FAA official may also extend the waiting period or, with the approval of P-1, request EPA to reduce this period for compelling reasons of national policy (40 CFR 1506.10(d)). The primary purpose for this waiting period is to provide for any pre-decision referral process for resolving interagency disagreements (40 CFR 1504.3). The purpose is not for receiving and incorporating public comments. If the responsible FAA official anticipates public comments on findings in the FEIS, the FAA should address these before the FEIS is approved, distributed, and filed. Further, if anyone fails to comment on an issue that reasonably could have been raised earlier (through scoping and DEIS comment period(s)), their comments need not prevail or delay the final decision. At the conclusion of the 30-day waiting period, the decisionmaker issues the final decision in a ROD (see paragraph 514) and may begin implementing the proposed action.

511. Distribution of Approved FEIS

The originating FAA region, center or service simultaneously distributes the approved FEIS as follows:

a. Send five copies to the EPA Office of Federal Activities (OFA).

(1) When using the regular United States mail service, send to: U.S. Environmental Protection Agency, Office of Federal Activities, NEPA Compliance Division, EIS Filing Section, Mail Code 2252-A, 401 M Street, SW, Washington, D.C. 20460.

(2) When sending the FEISs by special delivery (Federal Express, United Parcel Service, etc.) or hand carrying FEISs to the OFA, the address is: U.S. Environmental Protection Agency, Office of Federal Activities, NEPA Compliance Division, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7241, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20044.

b. Five copies to the appropriate regional office of EPA (one copy, if categorized as LO-1 per paragraph 508h of this order).

- c. One copy of the FEIS to each of the following: the office director; Regional Administrator; and AEE.

d. One copy of the approved FEIS will be sent to the DOT Office of the Assistant Secretary for Transportation Policy , Environmental Policies Team, P-130.

e. A copy of the FEIS also will be sent to:

(1) Each Federal, Tribal, State, and local agency and to private organizations that made substantive comments on the DEIS and to individuals who requested a copy of the FEIS or who made substantive comments on the DEIS;

(2) DOI (6 to 9 copies of the FEIS depending on the action's geographic location and scope) at the following address: Director, Office of Environmental Policy and Compliance, U.S. Department of the Interior, Main Interior Building, MS 2340, 1849 C Street, N.W., Washington, D.C. 20240.

(3) For transportation proposals having major energy-related consequences, one copy will be sent to DOE headquarters.

f. Adequate number of copies (varies by State) to the appropriate State-
- designated single point of contact (or specific agency contacts when States have not designated a single contact point), unless otherwise designated by the governor.

g. Additional copies will be sent to accessible locations to be made available to the general public, including headquarters and regional offices; and State, metropolitan, and local public libraries to facilitate accessibility.

h. FEISs, comments received, and supporting documents will be made available to the public without charge to the fullest extent practical or at a reduced charge, which is not more than the actual cost of reproducing copies, at appropriate agency office(s) or at a designated location.
512. *Record of Decision (ROD)*

Following the review periods described in 40 CFR 1506.10 (i.e., 90 days from DEIS Notice of Availability (NOA) issuance and 30 days for FEIS NOA issuance), the agency's decisionmaker may make a decision on the Federal action. The ROD presents the agency's official decision on the action and identifies applicable mitigation and monitoring actions required (see 40 CFR 1505.2). The ROD may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. The ROD shall identify and discuss all factors including any essential considerations of national policies which were balanced by the agency in making its decision and state how those considerations entered into the decision. The ROD shall state whether all practicable means to avoid or minimize environmental harm from the alternatives selected have been adopted, and if not adopted, why they were not adopted. The draft ROD should accompany the proposed FEIS during the internal review prior to approval only when headquarters' concurrence is required. The decisionmaker must obtain concurrence before approving the ROD. After approving the ROD, the decisionmaker may begin implementing the selected action. Figure 5-4, Record of Decision Overview, presents an overview of the components of a ROD.

Figure 5-4.—Record of Decision Overview

Purpose	Scope	Content	Public participation
Announces the FAA's decision regarding the proposed major action.	<ul style="list-style-type: none">States the FAA's decision and the basis for the decision.Summarizes the FEIS analyses and selected mitigation measures.	<ul style="list-style-type: none">States the FAA's preferred alternative.Identifies all alternatives considered by the FAA.States whether all precautions to avoid or minimize harm to the environment were considered, and if not, explains why environmental precautions would not be taken.Explains, when appropriate, the mitigation implementation responsibilities.Makes appropriate findings required by executive order, regulation, or law (e.g., 4(f), wetlands, etc.).	Provides a notice of the decision to the public.

- a. Regional Administrators are responsible for signing RODs where proposed actions cross regional or program lines. The lead regional operating division responsible for preparing and approving the FEIS will make this determination, obtain regional counsel concurrence, and facilitate signature by the appropriate decisionmaker. Subject to program-specific procedures for NEPA compliance, the division manager is responsible for signing RODs that do not cross regional or program lines.
- b. Any mitigation measure that was made a condition of the approval of the FEIS must be included in the ROD. RODs can be used to set forth the conditions required for the approval of the action, and to state mitigation measures that will be taken. A monitoring and enforcement program shall be adopted and summarized where applicable for any such mitigation. Proposed changes in or deletions of mitigation measures that were a condition of approval of the FEIS must be reviewed by the same agency offices that reviewed the FEIS and must be approved by the FEIS approving official.

c. Based on comments received on the FEIS, the decisionmaker may choose to take an action that was included within the range of alternatives of an approved FEIS but was neither the environmentally preferred alternative(s) nor the agency's preferred alternative as identified in the FEIS. In these cases, the decisionmaker must circulate the revised draft ROD for coordination and concurrence with the same agency offices that reviewed the FEIS. These offices may concur without comment,

may concur on the condition that specific mitigation measures be incorporated in the ROD, may request that a supplement to the FEIS be prepared and circulated, or may non-concur. The decisionmaker cannot approve the Federal action over a non-concurrence.

d. If the decisionmaker selects an alternative that involves other environmental law, regulations, or executive orders, such as those related to section 4(f) land, Federally listed endangered species, wetlands, historic sites, the agency must first complete any required evaluation and consultation, including supplementing the original FEIS and making the appropriate finding, prior to taking the action. Supplements to FEISs will be reviewed and approved in the same manner as the original document, and a new draft ROD should be prepared, circulated, and approved. A copy of the ROD should be forwarded with the FEIS to AEE-1 for their files.

e. Although the CEQ regulations do not require publication of a notice of availability of the ROD in the **Federal Register** except for actions of national concern, the ROD must be made available to the public pursuant to 40 CFR 1506.6(b) (see CEQ's "40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR 1500-1508)," 46 FR 18026, March 23, 1981). The responsible FAA official may publish a notice of a ROD in the **Federal Register** for actions not of national concern. Additional information on public involvement may be found in paragraph 208, and by contacting AEE (Environment & Energy Team, AEE-200) and AGC (Environmental Law Branch, AGC-620).

513. Tiering and Programmatic EISs

Program offices shall, to the extent practicable, build upon prior, broad EAs or EISs (see paragraph 500d(4)). For example, long-term developmental EISs and broad system, program, or regional EISs may be incorporated by reference in support of project-specific EISs. The purpose of tiering is to eliminate repetition and facilitate analysis of issues at the appropriate level of detail. Programmatic EISs are tailored to particular program needs and, in practice, only need to be used to assist a program in environmental documentation vis-a-vis site- or action-specific documentation (see 40 CFR 1502.20 and 1508.28 and paragraph 409).

514. Time Limits for EISs

The time limits established for all FAA EISs, including programmatic EISs, are contained in this paragraph.

a. A DEIS may be assumed valid for a period of three years. If the proposed FEIS is not submitted to the approving official within three years from the date of the DEIS circulation, a written reevaluation of the draft will be prepared by the responsible FAA official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the DEIS remain applicable, accurate, and valid. If there have been changes in these factors that would be significant in the consideration of the proposal, a supplement to the DEIS or a new DEIS will be prepared and circulated.

b. For approved FEISs, three sets of conditions have been established:

(1) If major steps toward implementation of the proposed action (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within three years from the date of approval of the FEIS, a written reevaluation of the adequacy, accuracy, and validity of the FEIS will be prepared by the responsible FAA official (unless EIS tiering is being used). If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental FEIS will be prepared and circulated.

(2) If the proposed action is to be implemented in stages or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy, and validity of the FEIS will be made at each major approval point that occurs more than three years after approval of the FEIS and a new or supplemental EIS prepared, if necessary.

(3) If the proposed action has been restrained or enjoined by court order or legislative process after approval of the FEIS, the 3-year period may be extended by the time equal to the duration of the injunction, restraining order, or legislative delay.

515. Written Reevaluation

a. The preparation of a new EIS is not necessary when it can be documented that the:

(1) Proposed action conforms to plans or projects for which a prior EIS has been filed;

(2) Data and analyses contained in the previous EIS are still substantially valid; and

(3) Pertinent conditions and requirements (all) of the prior approval

have, or will be, met in the current action.

b. This evaluation, signed by the responsible FAA official, will either conclude the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new EIS.

c. The written re-evaluation should be reviewed internally according to the provisions of paragraph 509 for review and concurrence of FEISs.

516. Revised or Supplemental EISs

a. The agency prepares supplements to either DEISs or FEISs if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Significant information is information that paints a dramatically different picture of impacts compared to the description of impacts in the EIS. The agency also may prepare supplements when the purposes of NEPA will be furthered by doing so.

b. The agency prepares, circulates, and files a supplement to a DEIS or FEIS in the same fashion as the original DEIS or FEIS, unless alternative procedures are approved by the CEQ. If, however, there are compelling reasons to shorten time periods, the agency may consult with CEQ (see paragraph 513). Scoping should be considered, but is not required.

c. The preparation of a new EIS is not necessary when the proposed action conforms to plans or projects for which a prior EIS has been filed, the data and analyses contained in the previous EIS are still substantially valid, and that all pertinent conditions and requirements of the prior approval have or will be met in the current action. This evaluation, signed by the responsible FAA official, will either conclude that the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new environmental document. If a supplement changes a ROD, a new ROD should be issued after the supplement has been reviewed for 30 days.

d. The responsible FAA official may also publish periodic fact sheets to inform the public of the status of the EIS or other supplemental environmental information, such as reports, on long-term or complex EISs to provide information that does not require preparation of a supplemental EIS. The responsible FAA official should notify EPA to ensure that the official log is

accurate, and to include this information as a separate section within the Notice of Availability (see EPA Filing System for Implementing the CEQ Regulations, 54 FR 9593, March 7, 1989).

517. Referrals to Council on Environmental Quality

The CEQ may serve as a mediator in interagency disagreements over proposed Federal actions that might cause unsatisfactory environmental effects. If a commenting agency determines that an action is environmentally unsatisfactory, the matter may be referred to CEQ during the 30-day period after filing the FEIS. When the responsible FAA official receives a notice of intended referral from the commenting agency, the responsible FAA official will provide P-1 (the Office of the Assistant Secretary for Transportation Policy) and AEE with a copy of the notice. (Airports personnel will alert APP-600 if a referral notice is received.) In the event of referral to CEQ by a commenting agency, the responsible FAA official forwards a proposed response to AEE within 10 days of referral. The response must address fully the issues raised in the referral and be supported by evidence. AEE will obtain P-1's concurrence on the proposed response. (APP-600 also will obtain P-1 concurrence for airports' actions). The response then will be sent to CEQ within 20 days of the referral.

518. Review and Adoption of Environmental Impact Statements Prepared by Other Agencies

Other Federal, Tribal, State, or local agencies may consult the FAA for assistance in analyzing environmental impacts that fall within FAA's functional area of responsibility. The FAA should provide its expertise on proposals affecting aviation and other FAA responsibilities as follows:

a. Comments will be specific in nature and organized in a manner consistent with the structure of the draft EIS and must identify alternatives or modifications that may enhance environmental quality or avoid or minimize adverse environmental impacts, and will correct inaccuracies or omissions.

b. Any agency project that is environmentally or functionally related to the proposed action in the EIS should be identified so that inter-relationships can be discussed in the EIS. In such cases, the agency should consider serving as a joint lead agency or cooperating agency.

c. Environmental monitoring for which the agency has special expertise

may be suggested and encouraged during construction, startup, or operation phases.

d. Other agencies will generally be requested to forward their DEISs directly to the appropriate FAA regional offices. The following types of matters, however, will be referred to appropriate office or service in the Washington headquarters for comment: actions with national policy implications; proposed actions that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance; legislation; or regulations having national impacts, or national program proposals. DEISs in these categories are to be referred to P-1 for preparation of Department of Transportation (DOT) comments and, where appropriate, to the appropriate office or service in the Washington headquarters. In referring these matters to headquarters, the regional office is encouraged to prepare a proposed DOT response.

e. Regional offices review DEISs that do not have national implications. Comments will be forwarded directly to the office that the originating agency designates for receipt of comments. If the FAA receiving office believes that another DOT office also has an interest or is in a better position to respond, the FAA office should transmit the DEIS to the appropriate DOT office in a timely fashion. If the FAA and other DOT administrations comment at the regional level, the Regional Administrator or designee may coordinate the comments.

f. When appropriate, the FAA will coordinate a response with DOT offices having special expertise in the subject matter.

g. Comments will be submitted within the time limits set forth in the request, unless the office responsible for submitting comments seeks and receives an extension of time. Comments must be concise and specify any changes desired either in the action proposed and/or in the environmental statement.

h. FAA may adopt, in whole or in part, EISs prepared by other agencies. When the FAA adopts an EIS in whole or in part, the responsible FAA official must independently make a written evaluation of the information contained in the EIS, take full responsibility for scope and content that addresses FAA actions, and issue its own ROD. The responsible FAA official may also summarize the adopted portions followed by a direct reference to the EIS. If more than three years have elapsed since the EIS was issued, the responsible FAA official should prepare a written re-evaluation of the EIS (see paragraph 516). Pursuant to 40 CFR

1503.3, if the responsible FAA official does not accept an EIS prepared by another agency, the responsible FAA official shall specify in its comments to that agency whether it (FAA) needs any additional information or describe the mitigation measures the FAA considers necessary to grant or approve an applicable permit, license, or related requirements or concurrences. If the responsible FAA official comments on the action agency's predictive methodology, the responsible FAA official should describe the preferred alternative methodology and explain why the FAA prefers this methodology.

519. Legislative Proposals

Before the FAA submits to the Congress a legislative proposal significantly affecting the environment, the office that originates the legislation will prepare, circulate, and file an EIS with EPA. The Office of the Secretary reviews legislative EISs and submits them to the Office of Management and Budget (OMB) for circulation in the normal legislative clearance process.

520. Regulations

For regulations, the DEIS or FONSI shall be prepared and made available in dockets (AGC-200) for public review at least 30 days prior to publishing the final rule. The Notice of Availability of the DEIS must be published at least 90 days or the Notice of Availability of the FEIS must be published at least 30 days, whichever is later, prior to publishing a final rule. When the DEIS is issued for public comment, copies will be made available for public review in dockets.

521. Environmental Effects of Major FAA Actions Abroad

a. In compliance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, (see paragraph 210b(3) of this order, and paragraph 16 of Order DOT 5610.1C, FAA actions significantly affecting the global commons (e.g., the oceans and Antarctica) outside the jurisdiction of any nation, FAA actions outside the U.S., its territories and possessions significantly affecting natural resources of global importance designated for protection by international agreement, FAA actions occurring within the U.S. or its territories that significant impact the environment of another country, or requests for FAA action by a foreign government, manufacturer, operator, may meet the criteria for preparing an EA, FONSI, EIS, or environmental studies. The responsible FAA official must coordinate communications concerning environmental studies or documentation with the State

Department through the Environmental Policies Team (P-130) of the Assistant Secretary for Transportation Policy.

b. With respect to requests for FAA action, after the State Department's notification, all FAA requests to a foreign applicant for information, which the FAA needs to prepare an environmental study or an EIS, should then be forwarded through the civil aviation authority of the applicant's government. Copies of the EIS and notices of any public hearings planned on the proposed action should be furnished to the:

- (1) Applicant;
- (2) Appropriate foreign civil aviation authority; and the
- (3) Washington, DC, embassy for the country where the applicant is located or the country that the proposed action would affect.

b. Other environmental laws, regulations, and executive orders have specific requirements regarding consideration of potential effects of Federal actions overseas (see appendix 1). Important examples include, but are not limited to, the following:

1. Under Executive Order 12088, Federal Compliance with Pollution Control Standards, the FAA must ensure that construction or operation of FAA facilities outside the United States complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

2. Under section 402 of the National Historic Preservation Act (16 U.S.C. 470a-2), "[p]rior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register [of Historic Places], the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effect."

c. Any substantial differences arising in the course of the EIS between the originating FAA organization and a foreign applicant or the affected foreign country should be referred to AEE (for proposed Airport actions, APP-600), which will consult with the Assistant Administrator for Policy, Planning, and International Aviation (API) to resolve any problems.

522. Limitation on Actions Subject to NEPA

For actions subject to an EIS the responsible FAA official should not take any action or make any irretrievable and

irreversible commitments of resources until appropriate environmental review has been completed under this order (see 40 CFR 1502.2(f) and 1502.4(c)(3)).

a. For informal rulemaking requiring an EIS, the DEIS shall normally accompany the proposed rule.

b. CEQ regulations specifically require that (see 40 CFR 1506.1):

(1) For projects requiring an EIS, no action concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives, unless the action is justified independently of the program, is itself accompanied by an adequate EIS, and will not prejudice the ultimate decision on the program.

(2) Further, if the FAA is considering an application from a non-Federal entity, and FAA is aware that the applicant is about to take an action within the agency's jurisdiction that would have an adverse environmental impact or limit the choice of reasonable alternatives, the responsible FAA official shall promptly notify the applicant that the FAA will take appropriate action to insure that the objectives and procedures of NEPA are achieved. However, this does not preclude development by applicants of plans or designs or performance of other work necessary to support the application.

523.-599. Reserved

Appendix 1. Analysis of Environmental Impact Categories

Section 1. Background and How-To-Use This Appendix

According to resource impact category, this appendix summarizes the requirements and procedures to be used in environmental impact analysis. Executive Orders, FAA and DOT Orders, and Memoranda & Guidance documents described in appendix 12 may also contain requirements that apply.

The potential impact categories, presented in sections, are as follows: Section

2. Air Quality
3. Coastal Resources
4. Compatible Land Use
5. Construction Impacts
6. Department of Transportation Act Sec. 4(f)
7. Farmlands
8. Fish, Wildlife, and Plants
9. Floodplains and Floodways
10. Hazardous Materials, Pollution Prevention, and Solid Waste
11. Historical, Architectural, Archeological, and Cultural Resources
12. Light Emissions and Visual Impacts

13. Natural Resources, Energy Supply, and Sustainable Design

14. Noise

15. Secondary (Induced) Impacts

16. Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risks

17. Water Quality

18. Wetlands

19. Wild and Scenic Rivers

To effectively use this appendix, first become familiar with the material contained in each impact area. Within each impact area, the overview box highlights major applicable Federal statute(s), regulations, executive orders, and guidance and the oversight agencies. Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, is addressed in this appendix in section 16 and in appendix 10. Since environmental justice is defined as any adverse and disproportionately high impact on minority populations and low-income populations, this E.O. applies to other impact categories where appropriate. Similarly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, is addressed in this appendix in section 16 and applies to other impact categories where appropriate. The other related Federal requirements that may apply were too numerous to list.

The information, however, should guide the responsible Federal Aviation Administration (FAA) official to appropriate resources and applicable requirements to be addressed as part of the National Environmental Policy Act (NEPA) process. To assist in this effort, the majority of the impact categories are divided into the following discussion areas (paragraphs): (1) Requirements; (2) FAA Responsibilities, and (3) Analysis of Significant Impacts. Following the discussion of FAA responsibilities, some impact categories will also have a discussion of significant impact thresholds if quantitative thresholds have been established by the FAA or appropriate oversight agencies.

Should a proposed Federal action have a potential air quality impact, for example, review the Air Quality section of this appendix (section 2) identify the legal references for air quality impacts. These requirements are summarized for ease of use; however, if further information is required, the statute, associated implementing regulations, and FAA policy should be reviewed with the staff of the Office of the Chief Counsel and/or regional counsel

support and through coordination with appropriate Federal and State agency personnel.

Once the standards and relationship of the requirements to the project are understood, the thresholds for adverse effect established by oversight agencies should be reviewed. This section summarizes the impact threshold used by the FAA to determine significance of the effects of the proposed action where such thresholds have been established.

For example, the FAA has issued guidance in determining the scope and context of potential noise impacts, and thus, whether noise increases require preparation of an EIS.

The final section, the analysis of impacts, provides guidance on the types and levels of evaluation when the impact is determined to be significant. It includes further information on consultations, studies, and

identification of mitigation alternatives and monitoring actions.

Within each applicable impact category, alternative mitigation measures are identified that should be followed except as otherwise provided under the procedures of section 176(c) of the Clean Air Act, section 106 of the National Historic Preservation Act, and other special purpose environmental laws.

Section 2.—Air Quality

Statute	Regulation	Oversight agency
Clean Air Act (CAA), as amended [42 United States Code (U.S.C.) 7401–7671] [Public Law (PL) 91–604, PL 101–549] Revision of Title 49, Transportation, U.S.C. 46106(c)(1)(B), as amended (formerly sections 509(B)(5) and (B)(7) of the Airport and Airway Improvement Act of 1982, as amended, PL 97–248) [49 U.S.C. 47106(c)(1)(B)] [PL 103–272, as amended]	Title 40 Code of Federal Regulations (CFR) parts 9, 50–53, 60, 61, 66, 67, 81, 82, and 93 (which includes General Conformity)	Environmental Protection Agency. Federal Aviation Administration.

2.1 Requirements

Three primary laws apply to air quality: NEPA, the Clean Air Act (CAA), and 49 U.S.C. 47106(c)(1)(B). As a Federal agency, the FAA is required under NEPA to prepare an environmental document (e.g., environmental impact statement (EIS) or environmental assessment (EA)) for major Federal actions that have the potential to affect the quality including air quality of the human environment). An air quality assessment prepared for inclusion in a NEPA environmental document should include an analysis and conclusions of a proposed action's impacts on air quality.

The CAA established National Ambient Air Quality Standards (NAAQS) for six pollutants, termed criteria pollutants. The six pollutants are: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone (O₃), particulate matter (PM–10 and PM–2.5), and sulfur dioxide (SO₂). The CAA requires each State to adopt a plan to achieve the NAAQS for each pollutant within timeframes established under the CAA. These air quality plans, known as State implementation plans (SIP), are subject to Environmental Protection Agency (EPA) approval. In default of an approved SIP, the EPA is required to promulgate a Federal implementation plan (FIP).

Title 49 U.S.C. 47106(c)(1)(B) provides that the DOT/FAA may not approve a grant application for an airport development project involving the location of the airport, runway, or

major runway extension, unless the Governor of the State in which the project will be located certifies that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air quality standards. Certification must be obtained from the Governor of the State prior to FAA approval of the project. Alternatively, unless delegation is prohibited under applicable State law, certification may be obtained from a State official to whom the Governor has expressly delegated, in writing, his or her authority in this area.

When a NEPA analysis is needed, the proposed action's impact on air quality is assessed by evaluating the impact of the proposed action on the NAAQS. The proposed action's build and no-build emissions are inventoried for each reasonable alternative. The inventory should include both direct and indirect emissions that are reasonably foreseeable. Normally, further analysis would not be required for pollutants where emissions do not exceed general conformity thresholds. However, based on the nature of the project and consultation with State and local air quality agencies additional analysis may be deemed appropriate. If there are any questions about whether additional analysis is reasonable, contact the appropriate headquarters office and the Office of Environment and Energy. If required, the emissions for the proposed action then are translated into pollutant concentrations using a dispersion

model. Depending on the project, this step can be data and computation intensive. Once dispersion modeling has been performed, pollutant concentrations are combined with background pollutant concentrations and compared to the NAAQS. If concentrations do not exceed the NAAQS, then the analysis is complete. If concentrations exceed the NAAQS, emissions must be mitigated or offset, or the action redesigned to reduce emissions.

In addition to NEPA, General Conformity, and grant funding requirements, there may be State and local air quality requirements to consider. These requirements can include, but are not limited to, provisions such as State indirect source regulations and State air quality standards.

Section 176(c) of the CAA, as amended in 1990, requires that Federal actions conform to the appropriate Federal or State air quality plans (FIPs or SIPs) in order to attain the CAA's air quality goals. Section 176(c) states:

"No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan."

Conformity is defined as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of

such standards, and that such Federal activities will not:

- a. Cause or contribute to any new violation of any standard in any area.
- b. Increase the frequency or severity of any existing violation of any standard in any area.
- c. Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA 1990 Amendments required the EPA to issue rules that would ensure Federal actions conform to appropriate FIP or SIP. A final rule for determining conformity of general Federal actions (40 CFR part 93, subpart B) was published in the **Federal Register** (FR) on November 30, 1993, and became effective January 31, 1994. In addition, 40 CFR part 51, subpart W specifies requirements for conformity which States must include in their respective SIP's. Once a SIP conformity provision has been approved by EPA, the State conformity requirements included in the SIP apply. EPA issued separate rules addressing conformity of highway, roadway, and transit plans and projects (40 CFR part 93, subpart A, and 40 CFR part 51, subpart T) on November 15, 1993. The remaining conformity discussion addresses only General Conformity since FAA actions are subject to this rule, although projects involving airport access may also be subject to some provisions of Transportation Conformity.

The General Conformity Rule establishes the procedures and criteria for determining whether certain Federal actions conform to State or EPA (Federal) air quality implementation plans. To determine whether conformity requirements apply to a proposed Federal action, the following must be considered: the non-attainment or maintenance status of the area; type of pollutant or emissions; exemptions from conformity and presumptions to conform; the project's emission levels; and the regional significance of the project's emissions. FAA actions are subject to the General Conformity Rule. Projects involving airport access that fall under 23 U.S.C. or the Federal Transit Act may also be subject to some provisions of Transportation Conformity.

General conformity requirements are distinct from NEPA requirements. For example, NEPA may require FAA to analyze several alternatives in detail. If a general conformity determination is required, only the proposed action must be addressed. General conformity, like other environmental requirements, should be integrated into the NEPA process as much as possible. For

example, the draft conformity determination should be issued along with any required draft EIS for public comment. However, there may be valid reasons to address general conformity separately rather than concurrently.

The General Conformity Rule only applies in areas that EPA has designated non-attainment or maintenance. A non-attainment area is any geographic area of the U.S. that experiences a violation of one or more NAAQS. A maintenance area is any geographic area of the U.S. previously designated non-attainment for a criteria pollutant pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment.

The rule covers direct and indirect emissions of criteria pollutants or their precursors from Federal actions that meet the following criteria:

- a. Reasonably foreseeable, and
- b. Can practicably be controlled and maintained by the Federal agency through continuing program responsibility.

Certain Federal actions are exempt from the requirement of the General Conformity Rule because they result in no emissions or emissions are clearly below the rule's applicability emission threshold levels. These include, but are not limited to:

- a. Continuing and recurring activities such as permit renewals.
- b. Routine maintenance and repair activities.
- c. Routine installation and operation of aviation and maritime navigation aids.
- d. Administrative actions.
- e. Planning studies and provision of technical assistance.
- f. The routine, recurring transportation of materiel and personnel.
- g. Transfers of land, facilities, and real properties.
- h. Actions affecting an existing structure where future activities will be similar in scope to activities currently being conducted.

i. Enforcement and inspection activities.

j. Air traffic control activities and adopting approach departure and en route procedures for air operations.

The General Conformity Rule provides a provision that permits agencies to develop a list of actions presumed to conform which would be exempt from the requirements of the rule unless regionally significant (discussed below). To date, FAA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the presumption of conformity will be published in the **Federal Register**.

A conformity determination is *not* required if the emissions caused by the proposed Federal action are not reasonably foreseeable; if the emissions caused by the proposed Federal action cannot practicably be controlled and maintained by the Federal agency through its continuing program responsibility; if the action is listed as exempt or presumed to conform; or if the action is below the emission threshold (*de minimis*) levels. The emission threshold levels are defined in the General Conformity Rule. If a Federal action is not exempt or presumed to conform, the project's emissions must be analyzed with regard to conformity applicability emission levels. The rule established the threshold emission levels (annual threshold levels) to identify those actions with the potential to have significant air quality impacts. If the project's emissions are *below* annual threshold levels (*de minimis* levels) and are not regionally significant, then the requirements of the general conformity regulation do not apply to the Federal action or project (and therefore, a conformity determination is *not* required).

In determining whether emission threshold levels are exceeded (and a conformity determination required), agencies must consider direct and indirect emissions. Direct emissions are those that are caused by or initiated by the Federal action and occur at the same time and place as the action. Indirect emissions are those caused by the Federal action, but that occur later in time and/or may be removed in distance from the action. Temporary construction emissions must be considered in determining whether emission threshold levels are exceeded. (See EPA General Conformity Questions and Answers, dated November 1994.)

In addition, the General Conformity Rule adopted the exclusive definition of indirect emissions, which excludes emissions that may be attributable to the Federal action, but that the FAA has no authority to control. The FAA is responsible for assessing only direct and indirect emissions of criteria pollutants and precursors that are caused by a Federal action, are reasonably foreseeable, and can practicably be controlled by the FAA through its continuing program responsibility. The FAA may compare emissions with and without the proposed Federal action during the year in which emissions are projected to be greatest in determining whether emission threshold levels are exceeded.

If a Federal action does not exceed the threshold levels or is presumed to

conform, it may still be subject to a general conformity determination if it has regional significance. If the total of direct and indirect emissions of any pollutant from a Federal action represent 10 percent or more of a maintenance or non-attainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and conformity rules apply. Parts of the overall Federal action that are exempt from conformity requirements (e.g., emission sources covered by New Source Review) should not be included in the analysis. The purpose of the regionally significant requirement is to capture those Federal actions that fall below threshold levels, but have the potential to impact the air quality of a region.

When it has been determined that a proposed Federal action is not exempt, presumed to conform, exceeds emission threshold levels, or is regionally significant, the agency must prepare a conformity determination based on analysis using criteria stated in EPA's General Conformity Rule (40 CFR part 93 (58 FR 63250, November 30, 1993)).

A proposed action cannot be approved or initiated unless conformity does not apply or a positive conformity determination is issued (i.e., the action conforms to the SIP). If initial analysis does not indicate a positive conformity determination, alternative actions (including mitigation measures as part of the action) should be considered and further consultation, analysis, and documentation will be necessary.

2.2 FAA Responsibilities

The FAA has a responsibility under NEPA to include in its EA or EIS sufficient analysis to disclose the potentially significant impact of a proposed action on the attainment and maintenance of air quality standards established by law or administrative determination.

It is also the FAA's affirmative responsibility under section 176(c) of the CAA to assure that its actions conform to applicable SIPs. Before the FAA can fund or support in any way any activity, it must address the conformity of the action with the applicable SIP using the criteria and procedures prescribed in the General Conformity Rule or applicable SIP.

In conducting air quality analysis for purposes of complying with NEPA or conformity, the FAA requires use of the Emissions and Dispersion Modeling System (EDMS) model for aviation sources (aircraft, auxiliary power units, and ground support equipment). The EPA accepted EDMS as a formal EPA preferred guideline model in 1993. An order form for the EDMS software and user's guide can be obtained from the EDMS Internet Site or by writing the EDMS Program, Federal Aviation Administration, Office of Environment and Energy, Rm. 902W, 800 Independence Ave., S.W., Washington, D.C. 20591.

If the proposed action either will not conform with the SIP or there is potential for the proposed action to cause the area to exceed the NAAQS, then further consultation, analysis, and documentation will be required in an EA or EIS and conformity determination document.

2.3 Significant Impact Thresholds

(No specific thresholds have been established.)

2.4 Analysis of Significant Impacts

When the analysis indicates potentially significant air quality impacts, it may be necessary to consult further with State or regional air quality officials and/or with EPA. It also is advisable to include such officials in the EIS scoping process to represent cooperating agencies with air quality expertise. These officials will help identify specific analyses needed, alternatives to be considered, or mitigation measures to be incorporated in the action.

Air Quality Assessment Procedures. NEPA, the CAA Amendments of 1990, and 49 U.S.C. 47106(c)(1)(B) have separate requirements and processes; however, their steps can be integrated and combined for efficiency. Also, an air quality analysis can require the coordination of many different agencies. Such coordination and subsequent analysis takes time; therefore, air quality impacts should be addressed as early as practicable when preparing an EA or EIS. For more detailed guidance on air quality procedures see the FAA's Air Quality Procedures for Civilian Airports and Air Force Bases, April 1997.

Modeling Requirements. The EDMS is FAA's required methodology for performing air quality analysis modeling for aviation sources. EDMS also offers the capability to model other airport emission sources that are not aviation-specific, such as power plants, fuel storage tanks, and ground access vehicles.

Except for air toxics or where advance written approval has been granted to use an equivalent methodology and computer model by the FAA Office of Environment and Energy, the air quality analyses for aviation emission sources from airport and FAA proposed projects conducted to satisfy NEPA, general conformity, and 49 USC 47106(c) requirements under the Clean Air Act must be prepared using the most recent EDMS model available at the start of the environmental analysis process. In the event that EDMS is updated after the environmental analysis process is underway, the updated version of EDMS may be used to provide additional disclosure concerning air quality but use is not required. A complete description of all inputs, particularly the specification of non-default data, should be included in the documentation of the air quality analysis.

Users also must provide one copy of EDMS input files used in the analysis and the corresponding output files to the responsible FAA official on magnetic media specified by the FAA official.

As stated above, EDMS currently is not designed to perform air toxic analyses for aviation sources, and may be supplemented with other air toxic methodology and models in consultation with the appropriate FAA regional program office. Use of supplemental methodology and models for more refined analysis of non-aviation sources also is permitted in consultation with the appropriate FAA regional program office.

All input data should be collected early in the environmental process and should reflect the latest available data. Assistance from the FAA Office of Environment and Energy is available on a case-by-case basis by request through the respective headquarters operating office.

Section 3. Coastal Resources

Statute	Regulation	Oversight agency
Coastal Barrier Resources Act of 1982 as amended by the Coastal Barrier Improvement Act of 1990 [16 U.S.C. 3501–3510] [PL 97–348]	U.S. Department of Interior Coastal Barrier Act Advisory Guidelines, 43 CFR subtitle A (48 FR 45664)	Fish and Wildlife Service. Federal Emergency Management Agency.
Coastal Zone Management Act as amended [16 U.S.C. 1451–1464] [PL 92–583]	15 CFR part 930, subparts C and D 15 CFR part 923	National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. Appropriate State CZM Agency. National Oceanic and Atmospheric Administration.
Executive Order 13089, Coral Reef Protection (63 FR 32701, June 16, 1998)		

3.1 Requirements

Federal activities involving or affecting coastal resources are governed by the Coastal Barriers Resources Act (CBRA), the Coastal Zone Management Act (CZMA), and E.O. 13089, Coral Reef Protection. The CBRA prohibits, with some exceptions, Federal financial assistance for development within the Coastal Barrier Resources System that contains undeveloped coastal barriers along the Atlantic and Gulf coasts and Great Lakes. The CZMA and the National Oceanic and Atmospheric Administration (NOAA) implementing regulations (15 CFR part 930) provide procedures for ensuring that a proposed action is consistent with approved coastal zone management programs. E.O. 13089, Coral Reef Protection, requires Federal agencies to ensure that any actions that they authorize, fund, or carry out will not degrade the conditions of coral reef ecosystems.

Permits/Certificates: Not applicable.

3.2 FAA Responsibilities

CBRA. Maps specifically identifying lands included in the CBRA system are available from the Fish and Wildlife Service (FWS) office administering the CBRA program. If additional guidance on CBRA is needed, refer to the Department of Interior's (DOI) CBRA Advisory Guidelines (43 CFR Subtitle A, 48 FR 45664). If the proposed action would occur on land within the CBRA system and involve funding for development, the action must receive an FWS exemption from the provisions of the CBRA. Results of consultation with FWS must be incorporated in the environmental document. Project-related impacts on coastal resource biotic resources and water quality may be described in the document's CBRA section, or in the sections of the document addressing these biotic and water quality issues.

CZMA. When a proposed action affects (changes the manner of use or quality of land, water, or other coastal

resources, or limits the range of their uses) the coastal zone in a State with an approved coastal zone management (CZM) program, the EA or EIS shall include the following:

a. For Federally assisted activities or for other activities FAA itself undertakes, the views of the appropriate State or local agency as to the relationship of such activities with the approved State coastal zone management program, and the determination of the State as to whether the proposal is consistent with the approved State coastal zone management program.

b. For issuance of a Federal license or permit, the applicant's certification that the proposed action complies with the State's approved Coastal Zone Management program and that such activity will be conducted in a manner consistent with the program, and the State's concurrence with the applicant's certification. (Approval of an airport layout plan approval could by definition be a Federal license or permitting action.) The State's concurrence may be presumed if the State does not act within six months after receipt of the applicant's certification, provided the State did not require additional information regarding that certification.

E.O. 13089, Coral Reef Protection. Under this executive order, U.S. coral reef ecosystems are defined to mean those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States. When a proposed FAA action may affect U.S. coral reef ecosystems, the FAA shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to measures reducing impacts from pollution, sedimentation, and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in

cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests as part of the U.S. Coral Reef Initiative.

Other statutes, regulations, and executive orders may apply such as the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411–1421, 1441–1444, and 16 U.S.C. 1431–1434), the Abandoned Shipwreck Act of 1987 (43 U.S.C. 2101 *et seq.*).

3.3 Significant Impact Thresholds

(No specific thresholds have been established.)

3.4 Analysis of Significant Impacts

When a State having an approved CZM program raises an objection to the proposed action because the action would not be consistent with the applicable CZM plan, the FAA can not approve the action, unless the objection is satisfied, or it is successfully appealed to the Secretary of Commerce. The process will be normally completed prior to a determination by the FAA of whether or not an EIS is needed for the action. Actions of concern include:

a. The State agency objects to a FAA or sponsor consistency certification because the proposed action is inconsistent with the State's CZM Plan; or

b. The FAA or sponsor does not successfully appeal the State agency's objection to the NOAA Assistant Administrator. In either of these cases, the FAA shall not approve such an action unless it includes State agency recommended changes that would make the proposed action consistent with the State's CZM Plan.

If any issues remain that have not been resolved regarding the relationship of the action to an approved CZM program, such issues are identified in

the scoping process and resolved in the EIS. In this situation, the State coastal zone management agency is invited to participate in the scoping process.

For proposed actions determined to be inconsistent with the State's approved program and if the project cannot be modified so that it is consistent with the plan, the final EIS shall include a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or

objectives of the Coastal Zone Management Act or is necessary in the interest of national security. If a finding is not obtained from the Secretary of Commerce, the FAA can not approve the proposed action.

CBRA. Information regarding CBRA application and funding exceptions, including consultation with FWS, is sufficient for EIS purposes. Any significant impacts are reported under other appropriate impact categories.

CZMA. CZM consistency applies only to States having an approved CZM plan. If an action would occur in a State not having an approved CZM plan, the FAA should consult (as necessary) with State and Federal agencies having jurisdiction over or expertise on the affected resources to determine if additional information is needed. Discuss impacts on these resources in sections of the environmental document prepared for those resources.

Section 4. Compatible Land Use

Statute	Regulation	Oversight agency
Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 47501–47507)	14 CFR part 150	Federal Aviation Administration.

4.1 Requirements

The compatibility of existing and planned land uses in the vicinity of an airport is usually associated with the extent of the airport's noise impacts. Airport development actions to accommodate fleet mix changes or the number of aircraft operations, air traffic changes, or new approaches made possible by new navigational aids are examples of activities that can alter aviation-related noise impacts and land uses subjected to those impacts. In this context, if the noise analysis described in the noise analysis section (section 14) concludes that there is no significant impact, a similar conclusion usually may be drawn with respect to compatible land use. However, if the proposal would result in other impacts exceeding thresholds of significance which have land use ramifications, for example, disruption of communities, relocation, and induced socioeconomic impacts, the effects on land use shall be analyzed in this context and described accordingly under the appropriate impact category with any necessary

cross-references to the Compatible Land Use section to avoid duplication.

For airport actions, the Compatible Land Use section of the environmental document shall include documentation to support the required airport sponsor's assurance under 49 USC 47107(a)(10), formerly section 511(a)(5) of the 1982 Airport Act, that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. The assurance must be related to existing and planned land uses.

The Airport Development Grant Program (49 USC 47101 *et seq.*) requires that a project may not be approved unless the Secretary of Transportation is satisfied that the project is consistent with plans (existing at the time the project is approved) of public agencies for development of the area in which the airport is located (49 USC 47106(a)(1)).

Permits/Certificates: Not applicable.

4.2 FAA Responsibilities

FAA officials will contact the sponsor and representatives of affected communities to encourage the development of appropriate compatible land use measures early in the project planning stage. The environmental document shall address what is being done by the jurisdiction(s) with land use control authority, including an update on any prior assurance.

Table 1 describes compatible land use information for several land uses as a function of DNL values. The ranges of DNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular DNL level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or non-compatible land use is determined by comparing the predicted or measured DNL values at a site to the values listed in Table 1.

TABLE 1.—LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land use	Yearly day-night average sound level (L _{dn}) in decibels					
	Below 65	65–70	70–75	75–80	80–85	Over 85
Residential						
Residential, other than mobile homes and transient lodgings	Yes	No (1)	No (1)	No	No	No
Mobile home parks	Yes	No	No	No	No	No
Transient lodgings	Yes	No (1)	No (1)	No (1)	No	No
Public Use						
Schools	Yes	No (1)	No (1)	No	No	No
Hospitals	Yes	25	30	No	No	No
Churches, auditoriums, and concert halls	Yes	25	30	No	No	No
Government services	Yes	Yes	25	30	No	No
Transportation	Yes	Yes	Yes (2)	Yes (3)	Yes (4)	Yes (4)

TABLE 1.—LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS—Continued

Land use	Yearly day-night average sound level (L _{dn}) in decibels					
	Below 65	65–70	70–75	75–80	80–85	Over 85
Parking	Yes	Yes	Yes ⁽²⁾	Yes ⁽³⁾	Yes ⁽⁴⁾	No
Commercial Use						
Offices, business and professional	Yes	Yes	25	30	No	No
Wholesale and retail-building materials, hardware and farm equipment	Yes	Yes	Yes ⁽²⁾	Yes ⁽³⁾	Yes ⁽⁴⁾	No
Retail trade-general	Yes	Yes	25	30	No	No
Utilities	Yes	Yes	Yes ⁽²⁾	Yes ⁽³⁾	Yes ⁽⁴⁾	No
Communication	Yes	Yes	25	30	No	No
Manufacturing and Production						
Manufacturing, general	Yes	Yes	Yes ⁽²⁾	Yes ⁽³⁾	Yes ⁽⁴⁾	No
Photographic and optical	Yes	Yes	25	30	No	No
Agriculture (except livestock) and forestry	Yes	Yes ⁽⁶⁾	Yes ⁽⁷⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾	Yes ⁽⁸⁾
Livestock farming and breeding	Yes	Yes ⁽⁶⁾	Yes ⁽⁷⁾	No	No	No
Mining and fishing, resource production and extraction	Yes	Yes	Yes	Yes	Yes	Yes
Recreational						
Outdoor sports arenas and spectator sports	Yes	Yes ⁽⁵⁾	Yes ⁽⁵⁾	No	No	No
Outdoor music shells, amphitheaters	Yes	No	No	No	No	No
Nature exhibits and zoos	Yes	Yes	No	No	No	No
Amusements, parks, resorts, and camps	Yes	Yes	Yes	No	No	No
Golf courses, riding stables and water recreation	Yes	Yes	25	30	No	No

Note: The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute Federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

Yes—Land Use and related structures compatible without restrictions.

No—Land Use and related structures are not compatible and should be prohibited.

NLR—Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30, or 35—Land use and related structures generally compatible; measures to achieve NLR of 25, 30 or 35 dB must be incorporated into design and construction of structure.

¹ Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

² Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

³ Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

⁴ Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

⁵ Land use compatible provided special sound reinforcement systems are installed.

⁶ Residential buildings require an NLR of 25.

⁷ Residential buildings require an NLR of 30.

⁸ Residential buildings not permitted.

4.3 Analysis of Significant Impacts

When the noise analysis (see Noise, section 14) indicates that a significant noise impact will occur over noise sensitive areas within the DNL 65 dB contour, the analysis should include a discussion of the noise impact on those

areas. Any mitigation measures to be taken in addition to those associated with other land use controls shall be discussed. FAA Advisory Circular 150/5020-1, Noise Control and Compatibility Planning for Airports, presents guidance for airport operators and planners to help achieve

compatibility between airports and their environs. Special consideration may need to be given to whether Part 150 land use categories are appropriate for evaluating noise impact on properties protected under section 4(f) of the DOT Act (recodified as 49 U.S.C. 303).

Section 5.—Construction Impacts

Statute	Regulation	Oversight Agency
See requirements below.		

5.1 Requirements

Local, State, Tribal, or Federal ordinances and regulations address the impacts of construction activities, including construction noise, dust and noise from heavy equipment traffic, disposal of construction debris, and air and water pollution. Many of the specific types of impacts that could occur and permits or certificates that may be required are covered in the descriptions of other appropriate impact categories. Additionally, see the section on Hazardous Materials, Pollution Prevention, and Solid Waste the requirements under E.O. 12088, as amended, Federal Compliance with Pollution Control Standards, concerning compliance with foreign pollution control standards in the construction and operation of Federal facilities outside the United States.

Permits/Certificates: Clean Water Act section 402 National Pollutant

Discharge Elimination System (NPDES) permit (when construction disturbs 1 acre or more).

5.2 FAA Responsibilities

The environmental document must include a general description of the type and nature of the construction and measures to be taken to minimize potential adverse effects. At a minimum, reference is made to the incorporation in project specifications of the provisions of Advisory Circular 150/5370-10A, Standards for Specifying Construction of Airports. Although this AC provides information to reduce airport-related construction impacts, that information may also be applicable to many construction activities FAA undertakes or authorizes.

5.3 Significant Impact Thresholds

Construction impacts are rarely significant. Refer to the air quality,

water, fish, plants, and wildlife and other relevant impact categories for further guidance in assessing the significance of the potential impacts.

5.4 Analysis of Significant Impacts

In an unusual circumstance where a construction impact would create significant consequences that cannot be mitigated, a more thorough discussion is needed, including the results of consultations with those agencies that have concerns and the reasons why such impacts cannot be avoided or mitigated to insignificant levels. For example, in areas designated severe nonattainment for ozone, consider whether NO_x emissions caused by construction equipment for major capital improvement projects would result in potentially significant air quality impacts.

Section 6.—Department of Transportation Act, Section 4(f)

Statute	Regulation	Oversight agency
Department of Transportation Act of 1966, section 4(f) [recodified at 49 U.S.C. 303 (c)]		Department of Transportation.

6.1 Requirements

The Federal statute that governs impacts in this category is commonly known as the Department of Transportation (DOT) Act, section 4(f) provisions. Section 4(f) of the DOT Act, which was recodified and renumbered as section 303(c) of 49 U.S.C., provides that the Secretary of Transportation will not approve any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance or land from an historic site of national, State, or local significance as determined by the officials having jurisdiction thereof, unless there is no feasible and prudent alternative to the use of such land and such program, or the project includes all possible planning to minimize harm resulting from the use. This order continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section section 4(f) engendered are widely referred to as "section 4(f)" matters.

Procedural requirements are set forth in Order DOT 5610.1C, Attachment 2, paragraph 4. The FAA also uses as guidance to the extent relevant the Federal Highway Administration and Urban Mass Transportation

Administration's guidance defining Constructive Use under 23 CFR 771.135 (56 FR 13269, April 1, 1991).

Designation of airspace for military flight operations is exempt from section 4(f). The Department of Defense reauthorization in 1997 provided that "[n]o military flight operations (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of section 303(c) of title 49, United States Code" (PL 105-85, Nov. 18, 1997).

Permits/Certificates: Not Applicable.

6.2 FAA Responsibilities

a. Any part of a publicly owned park, recreation area, refuge, or historic site is presumed to be significant unless there is a statement of insignificance relative to the whole park by the Federal, State, or local official having jurisdiction thereof. Any such statement of insignificance is subject to review by the FAA.

b. Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes. National wilderness areas may serve similar purposes and

shall be considered subject to section 4(f) unless the controlling agency specifically determines that for section 4(f) purposes the lands are not being used.

c. Where property is owned by and currently designated for use by a transportation agency and a park or recreation use of the land is being made only on an interim basis, a section 4(f) determination would not ordinarily be required. The FAA official or sponsor should indicate in any lease or agreement involving such use that this use is temporary.

d. Where the use of a property is changed by a State or local agency from a section 4(f) type use to a transportation use in anticipation of a request for FAA approval, section 4(f) shall be considered to apply, even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of section 4(f).

e. For section 4(f) properties, the initial assessment will determine whether the requirements of section 4(f) are applicable. When there is an actual physical taking of lands being used for park or other purposes in conjunction

with a project, there is generally no latitude for judgement regarding 4(f) applicability. Use within the meaning of section 4(f) includes not only actual physical takings of such lands but also adverse indirect impacts (constructive use) as well. When there is no physical taking, but there is the possibility of constructive use, the FAA must determine if the impacts would substantially impair the 4(f) resource. If there would be no substantial impairment, the action would not constitute a constructive use and would not therefore invoke section 4(f) of the DOT Act.

f. Substantial impairment occurs only when the activities, features, or attributes of the resource that contribute to its significance or enjoyment are substantially diminished. A project which respects a park's territorial integrity may still, by means of noise, air pollution, or otherwise, dissipate its aesthetic value, harm its wildlife, defoliate its vegetation, and take it in every practical sense.

g. The land use compatibility guidelines in 14 CFR Part 150 (Part 150) may be relied upon to determine whether there is a constructive use under section 4(f) where the land uses specified in the Part 150 guidelines are relevant to the value, significance, and enjoyment of the 4(f) lands in question. Part 150 guidelines may be relied upon in evaluating constructive use of lands devoted to traditional recreational activities. FAA may primarily rely upon the average day night sound levels (DNL) in Part 150 rather than single event noise analysis because DNL is the best measure of significant impact on the quality of the human environment, is the only noise metric with a substantial body of scientific data on the reaction of people to noise, and has been systematically related to Federal compatible land use guidelines.

h. Turning to historic sites, FAA may also rely upon Part 150 guidelines to

evaluate impacts on historic properties that are in use as residences. If architecture is the relevant characteristics of an historic neighborhood, then project-related noise does not substantially impair the characteristics that led to eligibility for or listing on the National Register of Historic Places. As a result the noise does not constitute a constructive use and section 4(f) would not be triggered. A historic property would not be used for section 4(f) purposes when FAA issues a finding of No Effect or No Adverse Effect under section 106 of the National Historic Preservation Act. Section 4(f) may apply to archeological resources that have value chiefly for data recovery.

i. When assessing use of section 4(f) properties located in a quiet setting and the setting is a generally recognized feature or attribute of the site's significance, carefully evaluate reliance on part 150 guidelines. Special consideration beyond Part 150 guidelines needs to be given to section 4(f) properties of unique significance such as national parks and national wildlife refuges. For example, part 150 guidelines may not be sufficient to address the effects of noise on the expectations and purposes of people visiting rural wildlife refuges to study and enjoy wildlife or rural recreational areas. The responsible FAA official must consult all appropriate Federal, State, and local officials having jurisdiction over the affected section 4(f) resources when determining whether project-related noise impacts would substantially impair the resources.

j. If it is determined that section 4(f) is applicable and there are no feasible or prudent alternatives which would avoid such use, the effect on the section 4(f) land shall be described in detail. The description of the land shall include size, activities, patronage, access, unique or irreplaceable qualities,

relationship to similarly used lands in the vicinity, or other factors necessary to determine the effects of the action and measures needed to minimize harm. Such measures may include replacement of land and facilities and design measures such as planting or screening to mitigate any adverse effects. Replacement satisfactory to the Secretary of the Interior (DOI) is specifically required for recreation lands aided by the DOI's Land and Water Conservation Fund and for certain other lands falling under the jurisdiction of the DOI. The environmental document shall include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over such land regarding actions proposed to minimize harm.

k. If Federal grant money was used to acquire the land involved (e.g., open space under the Department of Housing and Urban Development (HUD) and various conservation programs under DOI) the environmental document shall include evidence of or reference to appropriate communication with the grantor agency.

6.3 Significant Impact Thresholds

A significant impact would occur when a proposed action would eliminate or severely degrade the purpose of use for which the section 4(f) land was established and mitigation would not reduce the impact to levels that would allow the purpose or use to continue.

6.4 Analysis of Significant Impacts

The FAA shall consult with the officials having jurisdiction over the section 4(f) property(ies), and other agencies, as necessary. The EIS thoroughly analyzes and documents alternatives that would avoid the use of section 4(f) property and provide detailed measures to minimize harm.

Section 7.—Farmlands

Statute	Regulation	Oversight agency
Farmland Protection Policy Act [7 U.S.C. 4201–4209] [PL 97–98, amended by section 1255 of the Food Security Act of 1985, PL 99–198]	7 CFR part 658 (59 FR 31109, June 17, 1994) 7 CFR part 657 (43 FR 4030) CEQ Memorandum on Analysis of Impacts on Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act, August 11, 1980 (45 FR 59189, September 8, 1980)	Natural Resource Conservation Service. Council on Environmental Quality.

7.1 Requirements

The Farmland Protection Policy Act (FPPA) regulates Federal actions with

the potential to convert farmland to non-agricultural uses.

Permits/Certificates: Not Applicable.

7.2 FAA Responsibilities

Consultation with the U.S. Department of Agriculture (USDA)

Natural Resources Conservation Service (NRCS) should occur to determine if the FPPA applies to the land the proposed action would convert to non-agricultural use, or if an exemption to the FPPA exists. If it is determined that the farmland is protected by the FPPA, formal coordination as provided by 7 CFR part 658 is required.

The responsible FAA official should become aware of and make all reasonable attempts to consult with other Federal, State, and local officials who have responsibility over any adjacent, nearby, or potentially affected lands to assure compatibility of the proposed action and affected farmland.

For FPPA-regulated farmland, scoring of the relative value of the site for preservation is performed by the NRCS and the proponent. If the total score on Form AD-1006 "Farmland Conversion Impact Rating" is below 160, no further

analysis is necessary. Scores between 160 and 200 may have potential impacts and require further consideration of alternatives that would avoid this loss. Consider measures that reduce the amount of protected farmland that the project would convert or use farmland having relative lower value. If NRCS fails to respond within 45 days and if further delay would interfere with construction activities, the action may proceed as though the site were not farmland protected by the FPPA. The FAA then documents a no response by the NRCS in the environmental document.

If there are unresolved land use issues with State and local officials, then further consultation will be required.

7.3 Significant Impact Thresholds

A significant impact would occur when the total combined score on Form AD 1006 (copies available from NRCS)

ranges between 200 and 260 points. Note that impact severity increases as the total combined score approaches 260 points.

7.4 Analysis of Significant Impacts

The analysis evaluates the impacts on agricultural production in the area; compatibility with State, local and private programs and policies to protect farmland; any disruption of the farming community either as a direct result of the construction or by changes in land use associated with the action; and non-viability of farm support services in the area as a result of farmland conversion. Measures to minimize harm will be considered, including adjustments in the action to reduce the amount of farmland taken out of production or retain as much of the land as possible for agricultural use by incorporation into compatible land use plans.

Section 8.—Fish, Wildlife, and Plants

Statute	Regulation	Oversight agency
Endangered Species Act of 1973 [16 U.S.C. 1531–1544] [PL 93–205]	50 CFR parts 17 and 22 50 CFR part 402 50 CFR parts 450–453 MOU on Implementation of the Endangered Species Act, September 28, 1994 MOU on Using an Ecosystem Approach in Agency Decision-making, December 5, 1995 CEQ Guidance on Incorporating Biodiversity Considerations into Environmental Impact Analysis, January 1993	Fish and Wildlife Service. National Marine Fisheries Service. U.S. Department of the Interior. Council on Environmental Quality.
Sikes Act Amendments of 1974 [PL 93–452] Fish and Wildlife Coordination Act of 1958 [16 U.S.C. 661–666c] [PL 85–624] Fish and Wildlife Conservation Act of 1980 [16 U.S.C. 2901–2912] [PL 96–366]	50 CFR part 83	State Natural Heritage Programs. Fish and Wildlife Service. Fish and Wildlife Service.
Executive Order 13112, Invasive Species (64 FR 6183, February 8, 1999) Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federally Landscaped Grounds (April 26, 1994)	DOT Policy on Invasive Species, April 22, 1999 Environmental Protection Agency, Office of the Federal Environmental Executive, Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837, August 10, 1995) Paragraph 3f of attachment 2; Order DOT 5610.1C	Departments of the Interior, Commerce, Agriculture, and Transportation. Environmental Protection Agency. Office of the Federal Environmental Executive.

8.1 Requirements

Section 7 of the Endangered Species Act (ESA), as amended, applies to Federal agency actions and consultations. Section 7(a)(2) requires each agency, generally the lead agency, in consultation with the services, U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), as appropriate, to ensure that

any action the agency authorizes, funds, or carries out is not likely to jeopardize the continued existence of any Federally listed endangered or threatened species or result in the destruction or adverse modification of critical habitat. (The effects on fish, wildlife, and plants include the destruction or alteration of habitat and the disturbance or elimination of fish, wildlife, or plant

populations.) Section 10 recovery plans should be reviewed for guidance. If a species has been listed as a candidate species, section 7(a)(4) states that each agency shall confer with the Services. Refer to the FWS and NMFS Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities

Under Section 7 of the Endangered Species Act, March 1998.

The Sikes Act and various amendments authorizes States to prepare statewide wildlife conservation plans and the Department of Defense (DOD) to prepare similar plans for resources under its jurisdiction. Actions should be checked for consistency with the State Wildlife Conservation Plans and DOD plans where such plans exist.

The Fish and Wildlife Coordination Act requires that agencies consult with the State wildlife agencies and the Department of the Interior (FWS) concerning the conservation of wildlife resources where the water of any stream or other water body is proposed to be controlled or modified by a Federal agency or any public or private agency operating under a Federal permit.

The Fish and Wildlife Conservation Act provides for financial and technical assistance to States to develop conservation plans, subject to approval by the Department of the Interior, and implement State programs for fish and wildlife resources. The Fish and Wildlife Conservation Act also encourages all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act.

E.O. 13112, Invasive Species, and the DOT Policy on Invasive Species require FAA to identify proposed actions that may involve risks of introducing invasive species on native habitat and populations. "Introduction" is the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity. "Invasive species" are alien species whose introduction does or is likely to cause economic or environmental harm to human health. Section 2 of the Executive Order spells out Federal agency duties. Where such an action has been identified, FAA may not authorize, fund, or carry out actions that the FAA believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions. In addition, FAA must to the extent practical and permitted by law, and subject to the availability of

appropriations, and within Administration budgetary limits, use relevant programs and authorities to prevent introduction; detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; monitor invasive species populations accurately and reliably; provide for restoration of native species and habitat conditions in ecosystems that have been invaded; conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and promote public education on invasive species and the means to address them. Other related requirements, include the Aquatic Nuisance Plant Control Act, which includes provisions relating to the brown tree snake, and those laws governing import or export of plants and animals across state and national borders, such as the Lacey Act Amendments of 1991, which prohibit the transport across state lines of any wildlife or plants taken in violation of any State law, depending on the circumstances.

The Presidential Memorandum on Economically and Environmentally Beneficial Landscaping encourages the use of native plants at Federal facilities and in federally funded landscaping projects. In addition, FAA Advisory Circular 150/5200-33, Hazardous Wildlife Attractants on or near Public Use Airports, recommends that a wildlife management biologist review landscaping plans for airports to minimize attracting hazardous wildlife (i.e., wildlife commonly associated with wildlife-aircraft strikes) to aircraft movement areas.

Also, it is the policy of the FAA, consistent with NEPA and the CEQ regulations, to encourage the use of a systematic, interdisciplinary approach that integrates ecological, economic, and social factors during the decisionmaking process. The goals of this approach are to restore and maintain the health, sustainability (i.e., doing things today to protect tomorrow's environment), and biological diversity of ecosystems, while supporting sustainable economies and communities (i.e., economies and community activities that consider the environmental needs of succeeding generations). Actions should reflect sensitivity to regional ecological and economic needs. An ecosystem approach emphasizes: (1) ensuring that all relevant and identifiable ecological and economic consequences, both long- and short-term, are considered; and (2)

improving coordination among Federal agencies.

In accordance with 40 CFR 1507.2(e), 1508.8(b)(3), and 1508.27, the CEQ guidance on incorporating biodiversity considerations into environmental impact analyses under the National Environmental Policy Act requires Federal agencies to consider the effects of Federal actions on biodiversity to the extent that is possible to both anticipate and evaluate those effects. The guidance outlines the general principles and discusses the importance of context, that is, examining the indirect, direct, and cumulative impacts of a specific project in the regional or ecosystem context.

In addition, the MOU on Using an Ecosystem Approach in Agency Decision-making requires FAA to participate, as appropriate to its mandates, in ecosystem management efforts initiated by other Federal agencies, by state, local or tribal governments, or as a result of local grass-roots efforts. The ecosystem approach, consistent with the requirements in NEPA to use ecological information, emphasizes consideration of all relevant and identifiable ecological and economic consequences both long term and short term; coordination among Federal agencies; partnership; communication with the public; efficient and cost-effective implementation; use of best available science; improved data and information management, and responsiveness to changing circumstances.

Permits/Certificates: Various wildlife statutes, such as the Marine Mammal Protection Act, require permits, or the Endangered Species Act requires issuance of a Biological Opinion, if an action may affect a Federally-protected species.

8.2 FAA Responsibilities

Coordination is to be initiated with the Services pursuant to the ESA for Federally listed endangered, threatened, and candidate species or designated critical habitat, and, pursuant to the Fish and Wildlife Coordination Act where there is a potential impact on water resources with the Services as well as other Federal, State, Tribal, and local agencies having administration over fish, wildlife, and plant resources. For Federally listed, proposed, and candidate species and listed and proposed critical habitat, this initial step is known as informal consultation and triggers the ESA section 7(d) prohibition on irreversible or irretrievable commitment of resources.

Letters will be obtained from these officials on the possible effects of the

proposal on these resources and possible mitigation measures. The letters from the appropriate officials will provide an indication of the potential for substantial damage to water resources and wildlife attributable to the proposal, if applicable.

Informal consultation under ESA section 7: Informal consultation with the Services under section 7 of the ESA will clarify whether and what Federally listed, proposed, or candidate species or Federally designated or proposed critical habitat may be found in the potentially impacted areas, determine what effect the action may have on these species or critical habitats; explore ways to modify the action to reduce or remove adverse effects to the species or critical habitats; determine the need to enter into formal consultation for listed species or designated critical habitat, or conference for proposed species or proposed critical habitat; and explore the design or modification of an action to benefit the species. The Services will prepare or concur with the action agency's species list and identify major gaps in biological information. A biological assessment (BA) is defined as information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. Biological assessments are mandatory for "major construction activities." See 50 CFR 402.02. BA's are not required to analyze alternatives to proposed actions. The recommended contents of a BA are found in 50 CFR 402.12(f). For other types of proposed actions, the Federal agency must provide the Services with the information the Federal agency used in evaluating the likely effects of the action. Informal consultation ends if the proposed action, whether a major construction activity or other action, is not likely to adversely affect species or critical habitat (i.e., effects are expected to be completely beneficial (contemporaneous positive effects without any adverse effects to the species), discountable (extremely unlikely to occur), or insignificant (should never reach the scale where take occurs)), and the Service concurs in writing.

Formal consultation under ESA section 7(a)(2): For Federally listed threatened and endangered species and Federally designated critical habitat, formal consultation with FWS or NMFS under section 7(a)(2) of the ESA is triggered when: (1) The FAA determines

that the proposed action "may affect" Federally listed species or designated critical habitat, unless the FWS or NMFS concur in writing that the proposed action is not likely to adversely affect any listed species or critical habitat, or (2) the FWS or NMFS does not concur with the agency's determination that the proposed action is not likely to adversely affect Federally listed species or designated critical habitat. Formal consultation is concluded when FWS or NMFS issues a Biological Opinion (No Jeopardy/Adverse Modification Opinion, including an incidental take statement, or Jeopardy/Adverse Modification Opinion), as discussed below.

Conference under ESA section 7(a)(4): If the proposed action is likely to adversely affect Federally proposed species or critical habitat, then conference is required for Federally proposed species and Federally proposed critical habitat, unless the Federal agency decides to include the analysis of effects on proposed species and proposed critical habitats in the formal consultation process. Conference can be useful in later expediting the consultation process when a proposed species is listed or proposed critical habitat is designated. For Federally proposed species and critical habitat, at the conclusion of conference, the Services will provide conservation recommendations. Conservation recommendations are discretionary agency activities.

Other statutes: Other statutes, such as the Marine Mammal Protection Act, may also apply depending upon the circumstances.

It may be assumed that there are no significant impacts on fish, wildlife, and plants if—For Federally listed threatened and endangered species and designated critical habitat under the ESA:

a. The reply from the FWS or NMFS following informal consultation indicates that the proposed action is not likely to adversely affect any listed species or critical habitat (i.e., the effects are completely beneficial, insignificant, or discountable); or

b. A Biological Opinion issued by the FWS or NMFS following formal consultation states that the proposed action is not likely to jeopardize the continued existence of Federally listed threatened or endangered species in the affected area or result in the destruction or adverse modification of Federally designated critical habitat in the affected area (No Jeopardy/Adverse Modification Opinion). A No Jeopardy/Adverse Modification Opinion may include one or more reasonable and

prudent alternatives to eliminate jeopardy. The incidental take statement, included in the No Jeopardy/Adverse Modification Opinion, provides nondiscretionary reasonable and prudent measures that are necessary and appropriate to minimize the level of incidental take and avoid jeopardy. Different levels of take and different reasonable and prudent measures may be specified for each reasonable and prudent alternative. (Formal consultation may be reinitiated when the amount or extent of incidental take is exceeded; new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; the action is modified in a manner causing effects to listed species or critical habitat not previously considered; or a new species is listed or critical habitat is designated that may be affected by the action.)

For species not Federally listed as threatened or endangered and habitats not Federally designated as critical under the ESA:

a. The FWS, NMFS, or other Federal, State or Tribal agency responsible for protecting wildlife where there is an impact on a water resource indicate that the impacted area is human-dominated, or the impact is transient in nature, or the alteration would not result in a long-term or permanent loss of wildlife or water resources.

b. If, after these efforts, significant impacts are unavoidable, then the responsible FAA official conducts further consultation and analysis with the Services and other Federal, State, Tribal, or local officials in the preparation of the EIS.

8.3 Significant Impact Thresholds

A significant impact would occur when the FWS or NMFS determines that the proposed action would be likely to jeopardize the continued existence of a threatened or endangered species or result in the destruction or adverse modification of Federally designated critical habitat in the affected area.

8.4 Analysis of Significant Impacts

a. General. The FAA will coordinate with the Services, other Federal, State, Tribal, or local wildlife agencies, and others as necessary to assess the potential impacts. If the proposed action affects water resources and thereby triggers the Fish and Wildlife Coordination Act, then the FAA considers the recommendations of the FWS, NMFS, other Federal agencies, and the State or Tribal wildlife agency and assures that further detailed

analysis is performed. This may include:

(1) Use of aerial photographs and field reconnaissance.

(2) Determining the significance of impacted habitats including the importance and range of fauna and flora and the location of nesting and breeding areas.

(3) A more detailed analysis of other impact areas (e.g., noise, air quality, water quality).

b. Federally listed threatened and endangered species and Federally designated critical habitat. For Federally listed threatened and endangered

species and Federally designated critical habitats, the FAA forwards to the Services the BA as required for major construction activities or supporting information as needed for other types of proposed actions with a request to initiate formal consultation under section 7(a)(2) of the ESA. The BA may be included in an EA. If the FAA accepts an alternative proposed by the FWS or the NMFS or proposes another acceptable alternative, the FAA also may conclude that impacts are not significant. If neither of the above apply, the potential impact is considered significant. In the preparation of an EIS,

the FAA requests the Services to be cooperating agencies on the basis of their jurisdiction. Further detailed analysis may consider:

(1) Further mitigation measures or action modifications.

(2) Further biological assessment.

(3) If the FWS or NMFS issues a Jeopardy/Adverse Modification Opinion, FAA may not proceed with the action unless the project is modified sufficiently to enable the Services to issue a No Jeopardy/Adverse Modification Opinion, or the action is exempted under 50 CFR part 451.

Section 9.—Floodplains and Floodways

Statute	Regulation	Oversight agency
Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951)	Order DOT 5650.2, Floodplain Management and Protection	Federal Aviation Administration.
Appropriate State and local construction statutes	Federal Emergency Management Agency "Protecting Floodplain Resources: A Guidebook for Communities," 1996	Federal Emergency Management Agency. Appropriate State and local agencies.

9.1 Requirements

Executive Order 11988 directs Federal agencies to take action to reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and restore and preserve the natural and beneficial values served by floodplains. Order DOT 5650.2 contains DOT's policies and procedures for implementing the executive order. Agencies are required to make a finding that there is no practicable alternative before taking action that would encroach on a base floodplain based on a 100-year flood (7 CFR 650.250).

9.2 FAA Responsibilities

The responsible FAA official will consult with State and local officials to determine the boundaries of floodplains near the site of the action. The Federal Emergency Management Agency (FEMA) maps are the primary reference for determining the extent of the base floodplain. If a floodplain designation is in question, FEMA or the Army Corps of Engineers will be contacted for information.

If the proposed action and reasonable alternatives are not within the limits of, or if applicable, the buffers of a base floodplain, a statement to that effect should be made. No further analysis is needed.

If the agency finds that the only practicable alternative requires siting in the base floodplain, a floodplain encroachment would occur and further environmental analysis is needed. The FAA shall, prior to taking the action, design or modify the proposed action to

minimize potential harm to or within the base floodplain. The action is to be consistent with regulations issued according to section 2(d) of E.O. 11988. The FAA shall also provide the public with an opportunity to review the encroachment through its public involvement process and any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document availability must state that an encroachment is anticipated.

A floodplain finding is required in cases of significant encroachment. This finding confirms that there is no practicable alternative to placing the project in the floodplain and that all measures to minimize harm will be included in the project. (see sec. 2a of E.O. 11988, Floodplain Management; dated May 24, 1977 [42 FR 26951])

When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the FAA shall (1) reference in the conveyance those uses that are restricted under identified Federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

FAA's analysis shall also indicate if the encroachment would be a "significant encroachment," that is, whether it would cause one or more of the following impacts:

a. The action would have a high probability of loss of human life.

b. The action would likely have substantial, encroachment-associated costs or damage, including interrupting aircraft service or loss of a vital transportation facility (e.g., flooding of a runway or taxiway; important navigational aid out of service due to flooding, etc.); or

c. The action would cause adverse impacts on natural and beneficial floodplain values.

If one or more of the alternatives under consideration includes significant floodplain encroachments, then any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document availability, shall note that fact.

When flood storage is displaced, the analysis should consider compensatory floodwater storage impacts on upstream property, or how that storage could affect aquatic or other biotic systems. Development project not causing higher flood elevations or altering flood storage could adversely affect beneficial or natural floodplain values.

Actions outside a base floodplain may adversely affect natural and beneficial floodplain resources. Consider impacts on natural and beneficial floodplain values, water pollution, increased runoff from impermeable surfaces, changes in hydrologic patterns, or induced secondary development. Mitigation to minimize such impacts is needed to comply with the applicable regulations. This mitigation may include: committing

to comply with special flood-related design criteria; elevating facilities above the base flood elevation; or minimizing fill placed in floodplains.

9.3 Significant Impact Thresholds

If a significant encroachment is involved that would result in notable adverse impacts on natural and beneficial floodplain values, preparation of an EIS is required. Mitigation measures for base floodplain encroachments may include committing to special flood related design criteria, elevating facilities above base flood

level, locating nonconforming structures and facilities out of the floodplain, or minimizing fill placed in floodplains.

9.4 Analysis of Significant Impacts

When the FAA prepares an EIS addressing significant impacts in this category, Federal, State, or local agencies with floodplain jurisdiction and expertise may become cooperating agencies. Further analysis includes the following as applicable to the action:

a. Further consideration of the practicability of any alternatives.

b. Inclusion of all practicable measures in the design of the proposal to minimize harm and to restore and preserve the natural and beneficial floodplain values affected. Commitments to later compliance with special flood related design criteria or the imposition, in advance, of protective conditions may be warranted in some situations.

c. Evidence that the action conforms to applicable State and local floodplain protection standards.

Section 10.—Hazardous Materials, Pollution Prevention, and Solid Waste

Statute	Regulation	Oversight agency
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Community Environmental Response Facilitation Act of 1992) [42 U.S.C. 9601–9675]	40 CFR parts 300, 311, 355, and 370	Environmental Protection Agency.
Pollution Prevention Act of 1990 [42 U.S.C. 1310–1319]	CEQ Memorandum on Pollution Prevention and the National Environmental Policy Act, January 12, 1993 (58 FR 6478)	Council on Environmental Quality. Environmental Protection Agency.
Toxic Substances Control Act of 1976, as amended (TSCA) [15 U.S.C. 2601–2692] [PL 94–469]	40 CFR parts 761 and 763	Environmental Protection Agency.
Resource Conservation and Recovery Act of 1976 (RCRA) [PL 94–580, as amended by the Solid Waste Disposal Act of 1980 (SWDA), PL 96–482, the Hazardous and Solid Waste Amendments of 1984, PL 98–616, and the Federal Facility Compliance Act of 1992, (FFCA) PL 103–386] [42 U.S.C. 6901–6992(k)]	40 CFR parts 240–280	Environmental Protection Agency.
Executive Order 12088, Federal Compliance with Pollution Control Standards, October 13, 1978 (43 FR 47707), amended by Executive Order 12580, January 23, 1987 (52 FR 2923) January 29, 1987		Environmental Protection Agency.
Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (58 FR 41981, August 3, 1993)		Environmental Protection Agency.
Executive Order 12580, Superfund Implementation, amended by Executive Order 13016 and 12777		

10.1 Requirements

Four primary laws have been passed governing the handling and disposal of hazardous materials, chemicals, substances, and wastes. The two statutes of most importance to the FAA in proposing actions to construct and operate facilities and navigational aids are the Resource Conservation and Recovery Act (RCRA) (as amended by the Federal Facilities Compliance Act of 1992) and the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA or Superfund) and the Community Environmental Response Facilitation Act of 1992. RCRA governs the generation, treatment, storage, and disposal of hazardous wastes. CERCLA provides for cleanup of any release of a hazardous substance (excluding petroleum) into the environment.

E.O. 12088, as amended, directs Federal agencies to: comply with “applicable pollution control standards,” in the prevention, control,

and abatement of environmental pollution; and consult with the EPA, State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution. For construction or operation of FAA facilities outside the United States, the FAA must ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

Executive Order 12580, Superfund Implementation amended by Executive Order 13016 and 12777 delegates most response authorities to EPA and USCG for abatement. Agencies must participate in response teams with opportunity for public comment before removal action is taken.

FAA actions to fund, approve, or conduct an activity may require consideration of hazardous material, pollution prevention, and solid waste impacts in NEPA documentation. NEPA documents prepared in support of project development should include an appropriate level of review regarding the hazardous nature of any materials or wastes to be used, generated, or disturbed by the proposed action, as well as the control measures to be taken. The CEQ Memorandum on Pollution Prevention and the National Environmental Policy Act encourages early consideration, for example, during scoping, of opportunities for pollution prevention. FAA should, to the extent practicable, include pollution prevention considerations in the proposed action and its alternatives; address pollution prevention in the environmental consequences section; and disclose in the record of decision the extent to which pollution was considered. A discussion of pollution prevention may also be appropriate in an EA. Consideration of these issues in evaluating the effects of proposed actions should begin with an understanding of the following three terms:

Hazardous Material—any substance or material that has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce (49 CFR part 172, table 172.101). This includes hazardous substances and hazardous wastes.

Hazardous Waste—under the Resource Conservation and Recovery Act (RCRA) a waste is considered hazardous if it is listed in, or meets the characteristics described in 40 CFR part 261, including ignitability, corrosivity, reactivity, or extraction procedure toxicity.

Hazardous Substance—any element, compound, mixture, solution, or substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and listed in 40 CFR part 302. If released into the environment, hazardous substances may pose substantial harm to human health or the environment.

10.2 FAA Responsibilities

The FAA must comply with applicable pollution control statutes and requirements that may include, but may not be limited to, those listed in appendix 2 of Order 1050.10B, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

In accordance with Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, an Environmental Due Diligence Audit (EDDA) shall be conducted to evaluate subject properties for potential hazardous substances contamination that could result in future FAA liabilities.

FAA actions to fund or approve airport layout plans for terminal area development may also require consideration of solid waste impacts in NEPA documentation. A preliminary review should indicate if the projected quantity or type of solid waste generated or method of collection or disposal will be appreciably different than would be the case without the action. Special attention shall be given to the control of hazardous waste.

NEPA documents should include appropriate information as described below.

a. The environmental document should demonstrate that the FAA (or applicant as appropriate) has determined whether hazardous wastes as defined in 40 CFR part 261 (RCRA) will be generated, disturbed, transported or treated, stored or disposed, by the action under consideration. If so, management of these wastes is regulated by 40 CFR parts 260–280 and transportation is governed by 49 CFR parts 171–199. To the extent that the existence of hazardous wastes affects phasing of project construction, analysis of alternatives and consideration of mitigation measures, the means for compliance with applicable regulations must be discussed. It may be helpful to briefly discuss the means for compliance with applicable regulations in the NEPA documentation. For example, operators of activities that would cause hazardous waste must obtain a RCRA hazardous waste generator identification number from EPA or an authorized State. It should also demonstrate that the FAA or applicant has considered pollutant prevention and control in accordance with EO 12088.

b. The document should analyze alternatives considering applicable permitting requirements, and in the case of direct actions or funding, Federal and State guidelines and regulations on

procurement of recycled or recyclable productions, the source separation and recycling of recyclable products and solid waste storage, transport, or disposal.

c. The document should analyze the cost and feasibility of alternatives regarding the avoidance or use of hazardous materials, hazardous wastes, recycled materials, recyclable products, and any related need for permits, remediation, storage, transport, or disposal.

d. The document should indicate the presence of any sites within the action area listed or under consideration for listing on the National Priorities List (NPL) established by EPA in accordance with CERCLA. NEPA documentation should include a discussion of the impact of any NPL or NPL candidate sites on the action and/or impacts of the action on any NPL or NPL candidate sites. NEPA documentation should also identify sites in the vicinity that have been designated RCRA Solid Waste Management Units (SWMUs) and that may impact or be impacted by the action.

e. The NEPA documentation should reflect that consultation with the appropriate State agency (or EPA) has been initiated. If a formal agreement has been reached, it should be included in the document itself or incorporated by reference, as appropriate. In many cases, construction may not commence until a formal agreement between the FAA (or action sponsor) and the State agency (or EPA) has been executed.

f. The NEPA documentation, i.e., FONSI, EIS, Record of Decision, and FAA construction contracts should include a provision that in the event previously unknown contaminants are discovered during construction, or a spill occurs during construction, work should stop until the National Response Center (NRC) is notified. The NRC number is (800) 424-8802.

10.3 Analysis of Significant Impacts

Generally, additional information or analysis is needed only if significant problems are anticipated with respect to meeting the applicable local, State, Tribal, or Federal laws and regulations on hazardous or solid waste management. Additional data may include results of any further consultation with affected agencies and measures to be taken to minimize the impacts. Disposal that would adversely affect water quality or other environmental resources may be discussed under those sections of the environmental analysis addressing affected resources, with the hazardous material section cross-referencing those

sections. Actions that involve property listed (or potentially listed on) the NPL are considered significant by definition. In other cases, only a significant unresolved issue may warrant additional analysis in an EIS.

The cost and feasibility of any necessary remediation of hazardous waste contamination should be considered and for guidance on

considering existing environmental contamination issues associated with proposed actions to acquire land consult Order 1050.19.

For guidance on design, construction, and operational compliance of FAA facilities with pollution control statutes, the following FAA orders should be consulted:

a. Order 1050.10B, Prevention, Control, and Abatement of

Environmental Pollution at FAA Facilities.

b. Order 1050.14A, Polychlorinated Biphenyls (PCB) in the National Airspace System.

c. Order 1050.15A, Underground Storage Tanks at FAA Facilities.

d. Order 1050.18, Chlorofluorocarbons and Halon Use at FAA Facilities.

Section 11.—Historical, Architectural, Archaeological, and Cultural Resources

[This section reflects the major revisions to 36 CFR part 800 issued May 18, 1999]

Statute	Regulation	Oversight agency
Laws Governing National Historic Preservation Programs, National Natural Landmarks, and National Historic Landmarks		
Historic Sites Act of 1935 [16 U.S.C. 461–467] [PL 74–292 (1935)]		National Park Service.
National Historic Preservation Act of 1966, as amended, including Executive Order 11593 (36 FR 8921, May 13, 1971) [16 U.S.C. 470, 470 note] [PL 102–575 (1992)]	36 CFR parts 60 (National Register of Historic Places (NRHP)), 61 (State and Local Preservation Programs), 62.1 (National Natural Landmarks), 63 (NRHP), 65, 65.1 (National Historic Landmarks), 68 (standards), 73 (World Heritage Program), 78 (waiver of Federal agency section 110 responsibilities), 79 (curation) and 800 (consultation), as revised (64 FR 27043, May 18, 1999, effective June 17, 1999)	National Park Service, various offices. Advisory Council on Historic Preservation. State Historic Preservation Officer. Tribal Historic Preservation Officer.
Laws Governing the Federal Archeology Program		
Antiquities Act of 1906 [16 U.S.C. 431, 432, 433] [PL 59–209 (1906)]	43 CFR part 3 25 CFR part 261	Department of Interior, National Park Service.
Archaeological and Historic Preservation Act of 1974, as amended [16 U.S.C. 469–469c] [PL 89–665]	Guidelines for Archeology and Historic Preservation: Standards and Guidelines (DOI) (48 FR 44716, September 29, 1983) 36 CFR part 68	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service.
Laws Governing the Federal Archeology Program		
Archaeological Resources Protection Act of 1979, as amended [16 U.S.C. 470aa–470mm] [PL 96–95 (1979)]	43 CFR parts 3 and 7 36 CFR part 79 25 CFR parts 261 and 262 Federal Archeological Preservation Strategy	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service.
Native American Graves Protection and Repatriation Act of 1990 [25 U.S.C. 3001] [PL 101–601 (1990)]	43 CFR part 10 25 CFR 262.8 36 CFR part 79	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service.
Other Major Federal Historic Preservation Laws		
American Indian Religious Freedom Act of 1978 [42 U.S.C. 1996, 1996 note] [PL 95–341 (1978)]	43 CFR 7.7 and 7.32 25 CFR 262.7	
Public Building Cooperative Use Act of 1976 [40 U.S.C. 601(a), 601(a)(1), 606, 611(c), 612(a)(4)] [PL 94–541]	41 CFR parts 101–17, 101–17.002(l), (m), (n) (rural areas), 101.17.002(i)(2) (urban areas), and 101–19	General Services Administration.
Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities (61 FR 26071, May 24, 1996)		Advisory Council on Historic Preservation.
Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996)		Assistant to the President for Domestic Policy.
Executive Order 11593, Protection and Enhancement of the Cultural Environment (36 FR 8921, May 13, 1971) (16 U.S.C. 470 note)		Advisory Council on Historic Preservation.

11.1 Requirements

Several laws apply to this category of impact. The major laws include the National Historic Preservation Act (NHPA) of 1966, as amended, which establishes the Advisory Council on Historic Preservation (ACHP) and the National Register of Historic Places (NRHP) within the National Park Service (NPS). Section 110 governs Federal agencies responsibilities to preserve and use historic buildings; designate an agency Federal Preservation Officer (FPO); identify, evaluate, and nominate eligible properties under the control or jurisdiction of the agency to the National Register; give full consideration in planning to potentially affected historic properties; consult on preservation-related activities with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector; and comply with the consultation and public notice requirements of section 106, the professional standards of section 112, and the confidentiality requirements of section 314.

The Archaeological Resources Protection Act (ARPA) is triggered by the presence of archaeological resources on Federal or Indian lands. The Archeological and Historic Preservation Act of 1974 provides for the survey, recovery, and preservation of significant scientific, pre-historical, historical, archaeological, or paleontological data when such data may be destroyed or irreparably lost due to a Federal, Federally licensed, or Federally funded action. The DOI's Standards and Guidelines were published in the **Federal Register** (48 FR 44716, September 29, 1983) to advise Federal agencies on the manner in which this latter law will be implemented. Requirements are specified under subparagraph (c) of the Archeological and Historic Preservation Act of 1974.

The Native American Graves Protection and Repatriation Act (NAGPRA) is triggered by the possession of human remains or cultural items by a Federally funded repository or by the discovery of human remains or cultural items on Federal or tribal lands and provides for the inventory, protection, and return of cultural items to affiliated Native American groups. Most of the historic and archaeological preservation laws require consultation with Native Americans. Permits are required for intentional excavation and removal of Native American cultural items from Federal or tribal lands. The Act includes provisions that, upon inadvertent discovery of remains, the

action will cease in the area where the remains were discovered, and the FAA official will protect the materials and notify the appropriate land management agency. For additional information see the Advisory Council's policy statement of June 11, 1993, on Consultation with Native Americans Concerning Properties of Traditional Religious and Cultural Importance.

The Antiquities Act of 1906 was the first general law providing protection for archeological resources. It protects all historic and prehistoric sites on Federal lands and prohibits excavation or destruction of such antiquities without the permission (antiquities permit) of the Secretary of the department having jurisdiction. It also authorizes the President to declare areas of public lands as national monuments and to reserve or accept private lands for that purpose.

The Historic Sites Act of 1935 declares as national policy the preservation for public use of historic sites, buildings, objects, and properties of national significance. It gives the Secretary of the Interior authority to make historic surveys, to secure and preserve data on historic sites, and to acquire and preserve archeological and historic sites. This act also establishes the National Historic Landmarks program for designating properties having exceptional value in commemorating or illustrating the history of the United States. It gives the Secretary of the Interior broad powers to protect nationally significant historic properties, including the Secretary's authority to establish and acquire nationally significant historic sites.

The American Indian Religious Freedom Act of 1978 requires consultation with Native American groups concerning proposed actions on sacred sites on Federal land or affecting access to sacred sites. It establishes Federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their right to free exercise of their religion. It allows these people to access sites, use and possess sacred objects, and freedom to worship through ceremonial and traditional rites. In practical terms, the act requires Federal agencies to consider the impacts of their actions on religious sites and objects that are important to Native Americans, including Alaska Natives, and Native Hawaiians, regardless of the eligibility for the National Register of Historic Places.

The Public Building Cooperative Use Act of 1976, along with NEPA and NHPA, encourages the acquisition and use of space in suitable buildings of historic, architectural, or cultural

significance. The associated regulations provide procedures for implementing this goal in urban and rural areas.

Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, requires Federal agencies, when operationally appropriate and economically prudent, to use and maintain historic properties and districts, especially those located in central business areas and to give first consideration when locating Federal facilities to historic properties within historic districts, then developed or undeveloped sites within historic districts, and lastly to historic properties outside of historic districts. Any rehabilitation or construction that is undertaken must be architecturally compatible with the character of the surrounding historic district or properties.

Executive Order 13007, Indian Sacred Sites, requires Federal agencies that manage Federal lands, defined as any land or interests in land owned or leased by the United States, except Indian trust lands, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, to: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and (2) avoid adversely affecting the physical integrity of such sacred sites. Agencies shall maintain the confidentiality of sacred sites as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. The responsible FAA official should consult the provisions in Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), and the Presidential Memorandum of April 29, 1994, Government-to-government Relations with Native American Tribal Governments. Agencies are required, in formulating policies significantly or uniquely affecting Indian tribal governments, to be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. The EO requires Federal agencies to consult on a government-to-government basis with Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely

affect their communities (see 63 FR 27655, May 19, 1998). Additional information may be obtained from the FAA Federal Preservation Officer.

Executive Order 11593, Protection and Enhancement of the Cultural Environment (36 FR 8921, May 13, 1971; reprinted in 16 U.S.C. 470 note), and Order DOT 5650.1, Protection and Enhancement of the Cultural Environment, November 20, 1972, require that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historic, architectural, or archaeological significance.

Permits/Certificates: Various statutes, such as the Antiquities Act of 1906 (section 3), NAGPRA (section 3(c)), and ARPA (section 4), require permits.

11.2 FAA Responsibilities

The State or Tribal Historic Preservation Officer (SHPO/THPO) and other appropriate sources, must be consulted for advice early in the environmental process. See 36 CFR part 800 which governs the section 106 consultation process under NHPA and encourages coordination between section 106 and other statutes and with environmental and planning reviews under State or local ordinances. (Undertakings that have the potential to affect historic properties under section 106 constitute an extraordinary circumstance requiring an EA even if the project normally qualifies as a categorical exclusion under NEPA. Findings of no historic properties present or affected or no historic properties adversely affected under NHPA section 106 support determinations of no use (either constructive or physical) under DOT section 4(f)). See also specific requirements in 36 CFR part 800 and ACHP guidance for public involvement during the consultation process.

The responsible FAA official determines whether the proposed action is an "undertaking," as defined in 36 CFR 800.16(y) and whether it is a type of activity that has the potential to cause effects on historic properties. If the agency determines, and the SHPO/THPO concurs, that the action is not an undertaking or is an undertaking but does not have the potential to have an effect on historic properties, a historical or cultural resource survey is not necessary and the FAA may issue a determination that the action is not an undertaking or has no effect. If the action is an undertaking and may have an effect, then the first step is to identify the area of potential effect (APE) and the historical or cultural resources within it

(see Secretary's Standards and Guidelines for Identification).

Determination of Area of Potential Effect (APE): It is the FAA's responsibility to determine the APE. This determination is made generally in consultation with the appropriate SHPO(s)/THPO(s). APE means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties are subsequently identified within the APE. The ACHP and the SHPO/THPO may provide technical advice.

Identification and Evaluation Process: The FAA or designee must survey the APE to identify properties potentially eligible or listed on the National Register of Historic Places. If any eligible or listed property is identified within the area of the proposed action's APE, the ACHP's regulations, Protection of Historic Properties (36 CFR part 800) will be consulted and followed. Additional information may be obtained from the FAA's Federal (Historic) Preservation Officer in the Office of Environment and Energy and through cultural resources surveys in the APE.

Traditional cultural places (TCPs) may be eligible for listing on the National Register of Historic Places and thus may become the subject of section 106 consultation following the procedures in 36 CFR part 800 and National Park Service Bulletin 38 on "Identifying Traditional Cultural Places." The National Park Service Bulletin 38 identifies the National Register criteria for determining whether a place qualifies as a TCP under the National Historic Preservation Act. (Other NPS Bulletins are available to assist in identifying other types of historic properties. Many of these are on file with the FAA Federal Preservation Officer in the Office of Environment and Energy.) The FAA may obtain necessary information to apply the criteria by informally consulting. If informal consultation does not resolve issues relating to identification of properties as National Register eligible or the determination of effect, then the FAA must follow the procedures for identification and analysis outlined in the Secretary of the Interior's Standards and Guidelines.

If the site is a sacred site for a tribe, regardless of whether it is the subject of section 106 consultation or eligible for the National Register of Historic Places, the FAA must consult the tribe under the American Indian Religious Freedom Act of 1978, and the E.O. 13007, Indian Sacred Sites.

If human remains occur at the Federal or tribal lands site, NAGPRA applies.

Various archeological statutes, including ARPA and State, local and Tribal laws and ordinances may also apply. Criminal laws and the need to preserve evidence may also be involved when human remains are found. If criminal activity such as looting or vandalism is suspected, and consistent with FAA security directives, contact the FAA Federal Historic Preservation Officer in the Office of Environment and Energy, SHPO, or THPO to initiate coordination with the designated counterpart Federal, State, or Tribal law enforcement officials who are specially trained to investigate in such circumstances.

If the SHPO/THPO concurs with the FAA's determination regarding eligibility of a resource for inclusion in the National Register, then the consultation moves to the next step. If the SHPO/THPO does not concur, the FAA must seek a determination of eligibility from the Keeper of the National Register (DOI). The Keeper of the National Register is responsible for issuing formal determination of National Register eligibility when FAA and the SHPO/THPO can't agree on a resource's eligibility for the National Register. (See also 36 CFR part 63.) Any person can request ACHP review of an agency's findings related to identification of historic properties; evaluation of historic significance; and finding that no historic properties are present. As a result of such a request, the ACHP may request the FAA to seek a formal determination from the Keeper. This is called a "Determination of Eligibility" (DOE).

If no properties have been identified within the APE (i.e., the area or areas in where the undertaking has the potential to alter the characteristics that qualify or may qualify a property for inclusion in the National Register of Historic Places), and no resources have been identified that are subject to ARPA, NAGPRA, American Indian Religious Freedom Act (AIRFA), Antiquities Act, section 303 of the amended Department of Transportation Act (known as Section 4(f)), the Archeological and Historic Preservation Act, E.O. 13007, Indian Sacred Sites, or other laws covering specific types of cultural resources, then no further analysis is needed.

Effects Finding: It is the FAA's responsibility to make a finding of "no historic properties present or affected" or "no historic properties adversely affected" after applying the criteria of effect to historic properties in the APE and considering the views of the consulting parties and the public.

To assess effects of the undertaking on identified historic properties located in

the area of potential effect, the FAA applies the Criteria of Effect listed in 36 CFR part 800 in consultation with the SHPO/THPO. If the criteria in 36 CFR part 800 indicate and the SHPO/THPO agrees that the action would not affect any listed or eligible property, then a finding of no historic properties present or affected shall be made available to the SHPO's/THPO's, the consulting parties and the public prior to approving the undertaking. If there are no objections within 30 days of receipt of the finding, then FAA has fulfilled its responsibility. The findings shall be included in the environmental document.

No agreement on findings of no effect or no adverse effect: If the SHPO(s)/THPO(s) disagree with the FAA's finding of no historic properties present or affected or no historic properties adversely affected (No Adverse Effect), then the process moves to the next stage in which an adverse effect is presumed and negotiations are begun to identify mitigation measures.

If the SHPO/THPO disagrees with the FAA's finding of no historic properties present or affected or no historic properties adversely affected (No Adverse Effect), then the dispute may be referred to the ACHP. Supporting documentation for a finding of No Adverse Effect together with the written views of the SHPO/THPO will be forwarded to the ACHP for review by the Executive Director. Under 36 CFR part 800, any person can request ACHP review of an agency finding of No Adverse Effect. If ACHP does not agree with a No Adverse Effect finding and the FAA does not accept ACHP recommended changes, an Adverse Effect finding occurs.

If an adverse effect on properties is indicated, a finding of Adverse Effect and the Memorandum of Agreement (MOA) will be included in the Categorical Exclusion, EA or EIS with supporting documentation. If the consulting parties agree on an alternative to avoid or satisfactorily mitigate adverse effects, FAA must send information specified in 36 CFR 800.11(e) to ACHP to alert the ACHP of the adverse effect and provide the ACHP an opportunity to participate in consultation. The FAA and SHPO/THPO will then prepare and execute an MOA specifying how the proposed action will proceed to avoid or mitigate the adverse effects. For more information concerning drafting MOA's, consult the ACHP's Preparing Agreement Documents (PAD). A finding of Adverse Effect triggers further consultation among Federal agency, SHPO/THPO, and other interested

parties to consider means to avoid or minimize effects on historic properties. Mitigation can include data collection according to the Secretary's Guidelines prior to destruction or modification of the resource. The ACHP must be notified of the potential for adverse effect and may participate in consultation. The results of consultation concerning the action's adverse effects on an eligible or listed property are included in the MOA. If a finding of Adverse Effect cannot be avoided through mitigation or action modification, further consultation and analysis will be necessary.

Planning for Unanticipated Discovery:

In projects especially involving excavation or ground-disturbing activities which may result in unanticipated discovery of potentially eligible historic or archeological resources, the FAA should develop a plan for addressing impacts on these properties and include this plan in the MOA, or the EA or EIS prepared for the action. The MOA may include provision for unanticipated discovery and include provisions to halt construction. When the FAA has developed such a plan and then discovers historic properties after completing section 106 requirements, the FAA follows the plan that was approved during the section 106 consultation and thereby meets its section 106 requirements regarding the newly discovered properties. The FAA should include a commitment in the EA/FONSI or EIS/ROD to halt construction in the immediate vicinity of the discovered properties and implement the plan if new or additional historic properties are discovered after work has begun on a project. If the FAA has not prepared a plan to address discovery of unanticipated historic properties, then the FAA must afford the SHPO/THPO, the ACHP, and interested parties an opportunity to comment on effects to these newly discovered properties in one of several ways. See 36 CFR part 800 for additional information.

Programmatic agreements: When an undertaking is going to be repeated many times, e.g., the decommissioning of a particular type of building, the FAA may negotiate a programmatic agreement (PA) with the ACHP. A PA may also be negotiated with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) if the undertaking will be repeated in several different States (see 36 CFR part 800). The FAA may work through the National Association of Tribal Historic Preservation Officers (NATHPO) to facilitate coordination with tribes. A PA may also be negotiated

with the ACHP and the NCSHPO and counterpart tribal organization, if an undertaking is complex, wide in scope, and the effects are not known precisely. Typically, the FAA must be able to describe the undertaking, including the timeframe and whether the undertaking will be staged. For example, as studies are completed, the APE and the types of expected effects as well as the potential for mitigation must be identified before the ACHP will agree to the PA. For more information see 36 CFR 800.13 and the ACHP's Preparing Agreement Documents.

The FAA may proceed without agreement on mitigation, i.e., without a MOA or PA, but first the FAA must seek ACHP comment. The ACHP can send the request back to the FAA with the comment that it is premature to request ACHP comments until the FAA can provide more documentation. If the FAA has made a good faith attempt to identify eligible properties, determine effects, and negotiate an agreement on mitigation but has determined that agreement is unlikely, the ACHP may convene a panel of ACHP members and hold public hearings before preparing its comments. Typically, the ACHP will ask the FAA to pay for the cost of the panel's travel and other expenses related to the hearings. ACHP comments are directed to the Administrator. The Administrator must then respond to the ACHP comments before proceeding. This responsibility cannot be delegated.

11.3 Significant Impact Thresholds

The section 106 consultation process includes consideration of feasible and prudent alternatives to avoid adverse effects on National Register listed or eligible properties; of mitigation measures; and of accepting adverse effects. The FAA has the final judgment on whether the appropriate action choice is an EIS or a FONSI. Advice from the ACHP and the SHPO/THPO may assist the FAA in making this judgment.

11.4 Analysis of Significant Impacts

If the consulting parties agree that the alternative would not avoid or mitigate the adverse impacts but that it is in the public interest to proceed with the proposed action, a MOA shall be executed. This MOA may specify recording, salvage, or other measures that shall be taken to minimize adverse impacts before the proposed action proceeds. It is likely that, in this circumstance, the impact on National Register or eligible properties will be considered significant and require the preparation of an EIS.

The FAA makes the final decision on whether to prepare an EIS. If the FAA is already preparing a draft EIS because of other significant impacts, this draft EIS should discuss impacts on historic resources and can be submitted as the preliminary case report, if appropriately identified as such and if the FAA so requests in the cover letter transmitting the draft EIS and requesting comments. Unless accompanied by such a request,

circulation of the draft EIS does not constitute a request for ACHP comments pursuant to section 106 of NHPA and 36 CFR part 800.

The ACHP may be a cooperating agency when the preparation of an EIS is needed to address significant impacts on historic, archeological, and cultural resources. Information developed for and during the consultation process will be sufficient for purposes of EIS

documentation. The final EIS shall include comments of the ACHP and a copy of any MOA. (If a MOA has been executed prior to circulation of a draft EIS, the MOA shall be included in the draft). Within 90 days after carrying out the terms of a MOA, the FAA is required to report to all signatories on the actions taken to comply with the MOA.

Section 12.—Light Emissions and Visual Impacts

Statute	Regulation	Oversight agency
See requirements below.		

12.1 Requirements

A description of potential impacts due to light emissions or visual impacts associated with a Federal action may be necessary. Consideration should be given to impacts on people and properties covered by section 303 (formerly, 4(f)) of the DOT Act.

Permits/Certificates: Not Applicable.

12.2 FAA Responsibilities

a. Light Emissions. The responsible FAA official considers the extent to which any lighting associated with an action will create an annoyance among people in the vicinity or interfere with their normal activities. Because of the relatively low levels of light intensity compared to background levels associated with most air navigation facilities (NAVAIDS) and other airport development actions, light emissions impacts are unlikely to have an adverse impact on human activity or the use or characteristics of the protected properties. Information will be included in the environmental document

whenever the potential for annoyance exists, such as site location of lights or light systems, pertinent characteristics of the particular system and its use, and measures to lessen any annoyance, such as shielding or angular adjustments.

b. Visual Impacts. Visual, or aesthetic, impacts are inherently more difficult to define because of the subjectivity involved. Aesthetic impacts deal more broadly with the extent that the development contrasts with the existing environment and whether the community jurisdictional agency considers this contrast objectionable. Public involvement and consultation with appropriate Federal, State, local, and tribal agencies may help determine the extent of these impacts. The art and science of analyzing visual impacts is continuously improving and the responsible FAA official should consider, based on scoping or other public involvement, the degree to which available tools should be used to more objectively analyze subjective responses to proposed visual changes.

12.3 Analysis of Significant Impacts

When an action is determined to have significant light or visual-related impacts, use the following applicable instructions:

a. Light Emissions. The EIS description of potential annoyance from airport lighting and measures to minimize the effects should be documented in a similar fashion in an EIS to that in an EA. Further consideration may concentrate on previously unconsidered mitigation measures and alternatives. It is possible that the responsible FAA official will judge that a special lighting study is warranted.

b. Visual Impacts. The impact discussion will normally include appropriate presentation of the application of design, art, architecture and landscape architecture in mitigating adverse visual and other impacts and encouraging enhancement of the environment.

Section 13.—Natural Resources, Energy Supply, and Sustainable Design

Statute	Regulation	Oversight agency
See requirements below.		

13.1 Requirements

Executive Order 13123, Greening the Government Through Efficient Energy Management (64 FR 30851, June 8, 1999), encourages each Federal agency to expand the use of renewable energy within its facilities and in its activities. E.O. 13123 also requires each Federal agency to reduce petroleum use, total energy use and associated air emissions, and water consumption in its facilities.

It is also the policy of the FAA, consistent with NEPA and the CEQ regulations, to encourage the

development of facilities that exemplify the highest standards of design including principles of sustainability. All elements of the transportation system should be designed with a view to their aesthetic impact, conservation of resources such as energy, pollution prevention, harmonization with the community environment, and sensitivity to the concerns of the traveling public. This is in keeping with section 102(2)(A) of NEPA, which requires all agencies to “* * * utilize a systematic interdisciplinary approach,

which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking. * * *”

Permits/Certificates: Not Applicable.

13.2 FAA Responsibilities

Principles of environmental design and sustainability, including pollution prevention, waste minimization, and resource conservation should be followed generally in project or program planning. For purposes of the EA or EIS, the proposed action will be examined to

identify any proposed major changes in stationary facilities or the movement of aircraft and ground vehicles that would have a measurable effect on local supplies of energy or natural resources. If there are major changes, power companies or other suppliers of energy will be contacted to determine if projected demands can be met by existing or planned source facilities. The use of natural resources other than for fuel need be examined only if the action involves a need for unusual materials or those in short supply. For example, if a large volume of water will be required, the availability of a supply

of water from existing or planned water facilities or from surface or groundwater sources should be considered. Therefore, evaluation of significant energy, water, and other resource use for major construction actions is important.

For most actions, changes in energy demands or other natural resource consumption will not result in significant impacts. If an EA identifies problems such as demands exceeding supplies, additional analysis may be required in an EIS. Otherwise, it may be assumed that impacts are not significant.

13.3 Analysis of Significant Impacts

Analysis in an EIS includes detail needed to fully explain the degree of the problem and measures to be taken to minimize the impact. Measures such as more efficient airfield design, ground access improvements, or energy and resource efficient building design will be considered and described where applicable and incorporated in the action to the extent possible. The Department of Energy (DOE) may be a cooperating agency and be of assistance in determining additional specific analysis needed for energy use and in judging the seriousness of impacts.

Section 14.—Noise

Statute	Regulation	Oversight agency
49 U.S.C. 47501–47507 (Aviation Safety and Noise Abatement Act of 1979, as amended)	14 CFR part 150	Federal Aviation Administration.
49 U.S.C. 40101 et seq., as amended by PL 103–305 (Aug. 23, 1994) (The Federal Aviation Act of 1958)	Noise Control and Compatibility Planning for Airports Advisory Circular, 150/5020	
The Control and Abatement of Aircraft Noise and Sonic Boom Act of 1968	14 CFR part 161 Notice and Approval of Airport Noise and Access Restrictions	
49 U.S.C. 47101 et seq., as amended by PL 103–305 (Aug. 23, 1994) (The Airport and Airway Improvement Act)		Environmental Protection Agency.
49 U.S.C. 2101 et seq. (Airport Noise and Capacity Act of 1990)		
49 U.S.C. 44715 (The Noise Control Act of 1972)		

14.1 Requirements

For aviation noise analysis, the FAA has determined that the cumulative noise energy exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day/night average sound level (DNL). The FAA recognizes CNEL (community noise equivalent level) as an alternative metric for California. An initial noise analysis during the environmental assessment process should be accomplished to determine whether further, more detailed analysis is necessary.

The Interagency Memorandum of Agreement between the FAA and the Department of the Interior's National Park Service, Fish and Wildlife Service, and the Bureau of Land Management (January 1993) requires the FAA to coordinate efforts to minimize aviation impacts over lands controlled by these agencies within the Department of the Interior.

Permits/Certificates. Not applicable.

14.2 FAA Responsibilities

If significant noise impacts are expected, the FAA official must prepare a detailed noise analysis as part of an EIS in accordance with the following

requirements. An EIS need not be prepared if the proposed action incorporates mitigation that reduces the noise impact below significant noise impact threshold levels.

All detailed noise analyses must be performed using the most current version of the FAA's Integrated Noise Model (INM) or Heliport Noise Model (HNM) to develop noise exposure contours at and around airports and heliports, respectively. Use of an equivalent methodology and computer model must receive prior written approval from the FAA's Office of Environment and Energy (AEE). Precedence evaluation with FAA screening methodologies, e.g., Area Equivalent Method (AEM) and Air Traffic Noise Screening (ATNS), may be appropriate. Use of equivalent screening methodologies must receive prior written approval from AEE.

All computer model input data should be collected early in the environmental process and should reasonably reflect current and forecasted conditions relative to the proposed action and alternatives. Unless it can be justified, all noise analyses must be performed using the FAA's INM and/or HNM standard and default data.

Modification to standard or default data requires written approval from AEE.

EA and EIS preparers will provide input documentation with one copy of the INM/HNM input files used in the noise analyses and the corresponding case echo reports to the FAA official on electronic media specified by that official. If equivalent methodologies or the use of non-standard or non-default data are approved, a description of the methodology or additional, non-standard, or non-default data must be submitted along with a copy of AEE's approval.

14.3 Significant Impact Thresholds

A significant noise impact would occur if analysis shows that the proposed project will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure. For example, an increase from 63.5 dB to 65 dB is considered a significant impact.

14.4 Analysis of Significant Impacts

For proposed actions which result in a general overall increase in daily aircraft operations or the use of larger/noisier aircraft, as long as there are no changes in ground tracks or flight

profiles, the initial analysis may be performed using the FAA's Area Equivalent Method (AEM) computer model. The time of day is also part of the equation used in the AEM method. If the AEM calculations indicate that the proposed action would result in less than a 17 percent (approximately a DNL 1 dB) increase in the DNL 65 dB contour area, it may be concluded that there would be no significant impact over noise sensitive areas and that no further noise analysis is required. If the AEM calculations indicate an increase of 17 percent or more, or if the proposed action is such that use of the AEM is not appropriate, then the proposed action must be analyzed using the INM or HNM to determine if significant noise impacts will result.

The determination of significance must be obtained through the use of INM or HNM noise contours and/or grid point analysis along with local land use information and general guidance contained in Appendix A of 14 CFR part 150. Special consideration may need to be given to whether Part 150 land use compatibility categories need adjustment when evaluating the noise impact on properties of unique significance such as national parks, national wildlife refuges, and Tribal sacred sites. Part 150 land use guidelines are not applicable to determining impacts on wildlife. In general, studies to date indicate that aircraft noise has a minimal impact on animals. When instances arise in which aircraft noise is a concern with respect to wildlife impacts, available studies dealing with specific species should be reviewed and used in the analysis.

In accordance with the 1992 FICON (Federal Interagency Committee on Noise) recommendations, examination of noise levels between DNL 65 and 60 dB should be done if determined to be appropriate after application of the FICON screening procedure (FICON p. 3-5). If screening shows that noise sensitive areas at or above DNL 65 dB will have an increase of DNL 1.5 dB or more, further analysis should be conducted to identify noise-sensitive areas between DNL 60-65 dB having an increase of DNL 3 dB or more due to the proposed action. The FAA then uses this information during its consideration of potential mitigation for those areas (FICON p. 3-7).

The INM or HNM will be used to produce the following information:

- a. Noise exposure contours at the DNL 75 dB, DNL 70 dB, and DNL 65 dB levels. Additional contours are optional and considered on a case-by-case basis.
- b. Analysis within the proposed alternative DNL 65 dB contour to

identify noise sensitive areas where noise will increase by DNL 1.5 dB. Increases of 1.5 dB that introduce new noise sensitive areas to exposure levels of 65 dB or more are included in this analysis.

c. Analysis within the DNL 60-65 dB contours to identify noise sensitive areas where noise will increase by DNL 3 dB, only when DNL 1.5 dB increases are documented within the DNL 65 dB contour.

The noise analysis will be conducted to reflect current conditions and forecast conditions for all reasonable alternatives, including the preferred and no action alternatives. This analysis should include maps and other means to depict land uses within the noise impact area. The addition of flight tracks is helpful in illustrating where the aircraft normally fly. Illustrations shall be large enough and clear enough to be readily understood.

Noise monitoring data may be included in an EA or EIS at the discretion of the responsible FAA official. Noise monitoring is not required and should not be used to calibrate the noise model.

DNL contours and/or grid point analysis will be prepared for the following:

- a. Current conditions; and
- b. No Action conditions compared with the proposed action and reasonable alternatives. Comparisons should be done for appropriate timeframes. Timeframes usually selected are the year of anticipated project implementation and at least one year farther into the future by 5 to 10 years. Additional timeframes may be desirable for particular projects.

If the above comparisons show a DNL 1.5 dB or greater increase over a noise sensitive area within the DNL 65 dB contour, a level of significant noise impact has been reached.

The following information will be disclosed in the EIS for each modeling scenario that is analyzed:

- a. The number of people living within each noise contour at or above DNL 65 dB, including the net increase or decrease in the number of people exposed to that level of noise. (Use of maps that depict locations within a community of noise sensitive areas is recommended.)
- b. The location and number of noise sensitive uses (e.g., schools, churches, hospitals, parks, recreation areas) within the DNL 65 dB contour.
- c. Mitigation measures in effect or proposed and their relationship to the proposal.

When a proposed FAA action would result in a significant noise increase and

is highly controversial on this basis, the EIS should include information on the human response to noise that is appropriate for the proposal under analysis. Inclusion of data on background or ambient noise may be helpful.

14.5 Supplemental Noise Analysis

The Federal Interagency Committee on Noise (FICON) report, "Federal Agency Review of Selected Airport Noise Analysis Issues," dated August 1992, concluded that the Day-Night Average Sound Level (DNL) is the recommended metric and should continue to be used as the primary metric for aircraft noise exposure. However, DNL analysis may optionally be supplemented on a case-by-case basis to characterize specific noise effects. Because of the diversity of situations, the variety of supplemental metrics available, and the limitations of individual supplemental metrics, the FICON report concluded that the use of supplemental metrics to analyze noise should remain at the discretion of individual agencies.

Supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the DNL contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

Supplemental analyses may be accomplished using the various capabilities of INM for specific grid point analysis. Noise analyses can be used in combination with geographic information system (GIS) design programs such as AutoCAD and the U.S. Census TIGER databases to determine various population impacts within specified areas.

The following metrics have been used in developing supplemental noise analyses for a variety of reasons such as sleep disturbance, speech interference,

soundproofing, and analysis for special areas such as national parks:

- a. SEL (sound exposure level)—A single event metric that takes into account both the noise level and duration of the event and referenced to a standard duration of one second.
- b. L_{\max} (maximum sound level)—A single event metric that is the highest A-weighted sound level measured during an event.
- c. L_{eq} (equivalent sound level)—A cumulative level of a steady tone that provides an equivalent amount of sound energy for any specific period.
- d. TA (time above)—A single event metric that gives the duration, in minutes, for which aircraft-related noise exceeded a specified A-weighted sound level during a given period.
- e. SPL (sound pressure level)—One-third octave band sound pressure levels that form the starting point for all other noise metrics. SPL provides a detailed description of the frequency components of a single complex sound and are used in assessing the effectiveness of soundproofing.

The type and nature of community activity potentially impacted should be considered. The FICON report identified sleep disturbance and speech interference as two areas where it is appropriate to consider supplemental metrics. In the case of sleep disturbance, the report referred the reader to a dose-response relationship developed by the US Air Force Armstrong Laboratories. This relationship relates SEL to a percent-awakened number. No provision is made for combining the effects of multiple events. To examine speech interference, FICON recommends using a cumulative A-weighted metric that is limited to the affected time period hours or a Time-above analysis. Additionally, FICON provides a table that relates DNL to speech interference. The guidelines for both sleep interference and communication interference relate the degree of interference to *single event indoor noise levels*. For modeling purposes, FICON cites 15–25 dB reductions between indoor and outdoor levels. Single events above 85 dB can be assumed to have some effect on communication in a classroom.

14.6 Projects Not Requiring a Noise Analysis

- a. No noise analysis is needed for proposals involving Design Group I and II airplanes on utility or transport type airports whose forecast operations in the period covered by the EA do not exceed 90,000 annual propeller operations (247 average daily operations) or 700 jet operations (2 average daily operations).

These numbers of general aviation (GA) propeller and jet operations result in DNL 60 dB contours of less than 1.1 square miles that extend no more than 12,500 feet from start of takeoff roll. The DNL 65 dB contour areas would be 0.5 (one-half) square mile or less and extend no more than 10,000 feet from start of takeoff roll. Note that the Cessna Citation 500 and any other jet aircraft producing levels less than the propeller aircraft under study may be counted as propeller aircraft rather than jet aircraft.

- b. No noise analysis is needed for proposals involving existing heliports or airports whose forecast helicopter operations in the period covered by the EA do not exceed 10 annual daily average operations with hover times not exceeding 2 minutes. These numbers of helicopter operations result in DNL 60 dB contours of less than 0.10 (one-tenth) square mile that extend no more than 1,000 feet from the pad. Note that this rule applies to the Sikorsky S-70 with a maximum gross takeoff weight of 20,224 pounds and any other helicopter weighing less or producing equal or less levels.

14.7 Part 150 Noise Proposals

If the proposal requiring an EA or EIS is the result of a recommended noise mitigation measure included in an FAA-approved 14 CFR part 150 noise compatibility program, the noise analysis developed in the program will normally be incorporated in the EA or EIS. The FAA responsible official must determine whether this is sufficient for EA or EIS noise analysis purposes.

14.8 Facilities (Non-aircraft) and Equipment

The provisions of the Noise Control Act of 1972 (NCA) (P.L. 92–574), as amended, apply. FAA may use State and local standards as a guide for particular activities if these standards are at least as stringent as Federal standards. The NCA provisions apply to all land uses. FAA should give special attention to noise sensitive sites in developing mitigation (e.g., scheduling machinery operations near hospitals).

14.9 Flight Standards

Flight Standards actions that are subject to environmental procedures and assessments include the issuance of an air carrier operating certificate, an operating certificate, the approval of operations specifications or amendments thereto that may significantly change the character of the operational environment of an airport. The person responsible for issuing the certificate or approving the operations specifications is also responsible for

assuring the assessment is prepared. Thorough coordination among Flight Standards District Office personnel, the Regional Flight Standards Division and the Regional Noise Abatement Officer is essential. Coordination among regions is expected if action cross regional boundaries.

In preparing a noise analysis for an assessment, the Flight Standards District Office personnel normally will collect information from the operator that includes airports, types of aircraft and engines, number of scheduled operations per day, and the number of day/night operations. The information should also include the operator's long range plans and operation assumptions that are sufficiently conservative to encompass reasonably foreseeable changes in operations.

If the carrier declines to furnish the information, or if the furnished information on operations at the airport does not address night operations, or if the information otherwise patently understates the potential operations (when compared with carrier's operations at other airports or with other carrier's operations at that airport), the responsible Federal official will develop an operational assumption which includes night operations and which is otherwise consistent with the typical operations of similar carriers at similar airports. This operational assumption will be used in the environmental assessment after coordination with the affected air carrier. If the air carrier objects to the use of this operational assumption in the assessment, the carrier may specify that a lesser level of operations be used in the assessment, provided that the carrier agrees that this lesser level will serve as a limit on the operations specifications. If the carrier refuses such a limitation, the FAA will include all reasonably foreseeable operations in the assessment. In this situation the assessment shall state the operational assumption was developed solely for the purpose of environmental analyses and that it is not to be viewed as a service commitment by the carrier.

If an EIS is required, the affected operator should be advised as soon as possible and should be requested for any additional required information. District Office personnel will coordinate, as necessary, any activity with the operator. The certificate will not be issued or the operations specifications approved until all issues and questions associated with the EIS are fully resolved and the Regional Director has concurred with the issuance or approval.

Section 15.—Secondary (Induced) Impacts

Statute	Regulation	Oversight agency
See requirements below.		

Major development proposals often involve the potential for induced or secondary impacts on surrounding communities. When such potential exists, the EA shall describe in general terms such factors. Examples include:

shifts in patterns of population movement and growth; public service demands; and changes in business and economic activity to the extent influenced by the airport development. Induced impacts will normally not be

significant except where there are also significant impacts in other categories, especially noise, land use, or direct social impacts. In such circumstances, an EIS may be needed.

Section 16.—Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risks

Statute	Regulation	Oversight Agency
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601] [PL 91–528 amended by the Surface Transportation and Uniform Relocation Act Amendments of 1987, PL 100–117] Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994)	FAA Advisory Circular 150/5100–17 49 CFR part 24 FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects Order DOT 5610.2, April 15, 1997 CEQ Environmental Justice: Guidance Under the National Environmental Policy Act, December 10, 1997	Federation Aviation Administration. Department of Transportation. Council on Environmental Quality. Environmental Protection Agency.

16.1 Requirements

If acquisition of real property or displacement of persons is involved, 49 CFR part 24 implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended must be met. Otherwise, the FAA, to the fullest extent possible, observes all local and State laws, regulations, and ordinances concerning zoning, transportation, economic development, housing, etc. when planning, assessing, or implementing the proposed action. (This requirement does not cover local zoning laws, set-back ordinances, and building codes because the Federal government is exempt from them.)

Additional requirements and responsibilities are established by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and the accompanying Presidential Memorandum, Order DOT 5610.2, Environmental Justice, and Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks in accordance with 40 CFR 1508.27. These may apply to other impact categories, such as noise, air quality, water, hazardous materials, and cultural resources. During the initial review described in paragraph 201 of this order, the

responsible FAA official should consider demographic information for the purposes of anticipating potential public concerns, such as environmental justice and children's environmental health risks.

Executive Order 12898 and the accompanying Presidential Memorandum, and Order DOT 5610.2 require FAA to provide for meaningful public involvement by minority and low-income populations and analysis, including demographic analysis, that identifies and addresses potential impacts on these populations that may be disproportionately high and adverse. Included in this process is the disclosure of the effects on subsistence patterns of consumption of fish, vegetation, or wildlife, and to ensure effective public participation and access to this information. The Presidential Memorandum that accompanied E.O. 12898 and the CEQ and EPA Guidance encourage the consideration of environmental justice impacts in EAs, especially to determine whether a disproportionately high and adverse impact may occur.

Executive Order 13045 requires FAA to ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks and safety risks. The E.O. established a coordinating mechanism overseen by

EPA to develop a coordinating mechanism until such time as [NEPA] guidance is available. FAA will rely on currently available information consistent with 40 CFR 1502.22 concerning incomplete and unavailable information and 1502.24 concerning methodology and scientific accuracy.

The responsible FAA official should consult the provisions in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), and the Presidential Memorandum of April 29, 1994, Government-to-government Relations with Native American Tribal Governments. Agencies are required, in formulating policies significantly or uniquely affecting Indian tribal governments, to be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. The EO requires Federal agencies to consult on a government-to-government basis with Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely

affect their communities (see 63 FR 27655, May 19, 1998).

The FAA follows ANSI/IEEE (American National Standards Institute/Institute of Electrical and Electronic Engineers) guidelines for evaluating impacts of electromagnetic fields associated with communication, navigation, and surveillance facilities in accordance with 40 CFR 1508.27(b)(2). For additional information, the responsible FAA official should refer to Chapter 14, Radiation Safety Program, of FAA Order 3900.19B, FAA Occupational Safety and Health Program (April 29, 1999).

Permits/Certificates: Not Applicable.

16.2 FAA Responsibilities

The responsible FAA official consults with local transportation, housing, and economic development, relocation and social agency officials, and community groups regarding the social impacts of the proposed action. The principal social impacts to be considered are those associated with relocation or other community disruption, transportation, planned development, and employment. The environmental document provides estimates of the numbers and characteristics of individuals and families to be displaced, the impact on the neighborhood and housing to which relocation is likely to take place, and an indication of the ability of that neighborhood to provide adequate relocation housing for the families to be displaced. The environmental document includes a description of special relocation advisory services to be provided, if any, for the elderly, handicapped, or illiterate regarding interpretation of benefits or other assistance available.

The Presidential Memorandum that accompanied E.O. 12898 encourages the consideration of environmental justice impacts in EAs, especially to determine whether a disproportionately high and adverse impact may occur. Although such an analysis is not required in an environmental assessment, it may be helpful in determining whether there is a potentially significant impact. To implement Executive Order 12898, the accompanying Presidential

Memorandum, and Order DOT 5610.2, where there is a potentially significant impact as part of its EIS process, FAA must provide for meaningful public involvement by minority and low-income populations and for analysis, including appropriate demographic analysis of the potential effects, to identify and address potential impacts on these populations that may be disproportionately high and adverse, and then disclose this information to potentially affected populations for proposed actions that are likely to have a substantial effect and for CERCLA sites. The responsible FAA official should follow the procedures outlined in appendix 10 for analyzing the potential impacts, offsetting benefits, potential alternatives, and substantial need. Additional guidance may be obtained from CEQ Environmental Justice: "Guidance Under the National Environmental Policy Act."

FAA must identify and assess potential environmental health risks to children, which are defined to mean risks to health that are attributable to products or substances that the child is likely to come in contact with or ingest, such as air, food, water, soil, and products. In addition, an analysis of the environmental health effects of a planned regulation and an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency are required when the proposed action is a substantive regulatory action, that is, a rulemaking that may be economically significant under Executive Order 12866, Regulatory Planning and Review, or concern an environmental health risk that an agency has reason to believe may disproportionately affect children.

16.3 Significant Impact Thresholds

Factors to be considered in determining impact in this category include, but are not limited to, the following:

- a. Extensive relocation of residents is required, but sufficient replacement housing is unavailable.
- b. Extensive relocation of community businesses, and that relocation would

create severe economic hardship for the affected communities.

c. Disruptions of local traffic patterns that substantially reduce the levels of service of the roads serving the airport and its surrounding communities.

d. A substantial loss in community tax base.

16.4 Analysis of Significant Impacts

This category is triggered when the potential for significant impact exists, because of extensive relocation impacts, fragmentation of neighborhoods and communities, adverse and disproportionately high impact on minority or low income communities, or other community disruption, is identified. In these cases, additional analysis is needed to describe the degree of impact and to identify mitigation or alternative that could minimize such adverse effects. Such actions do not necessarily trigger preparation of an EIS (e.g., the impacts of a rulemaking that only affects children's safety risks (such as child safety seat rules) and does not raise environmental health risk issues could be addressed in the regulatory evaluation rather than in an EA or EIS).

If an insufficient supply of general available relocation housing is indicated, a thorough analysis of efforts made to remedy the problem will be reflected in the EIS including, if necessary, provision for housing of last resort as authorized by section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. If business relocation would cause appreciable economic hardship on the community, if significant changes in employment would result directly from the action, or if community disruption is considered substantial, the EIS will include a detailed explanation of the effects and the reasons why significant impacts cannot be avoided.

When the EA indicates substantial induced or secondary effects directly attributable to the proposal, a detailed analysis of such effects will be included in the EIS. As pertinent and to the extent known or reasonably foreseeable, such factors as effects on regional growth and development patterns, and spin-off jobs created will be described.

Section 17.—Water Quality

Statute	Regulation	Oversight agency
Federal Water Pollution Control Act, as amended, known as the Clean Water Act [33 U.S.C. 1251–1387] [PL 92–500, as amended by the Clean Water Floodplains and Floodways Act of 1977, 33 U.S.C. 1252, PL 95–217, and PL 100–4]; as amended by the Oil Pollution Act of 1990 (section 311 of the Clean Water Act) Safe Drinking Water Act, as amended (SDWA, also known as the Public Health Service Act) [42 U.S.C. 300f to 300j–26] [PL 104–182] Fish and Wildlife Coordination Act of 1980 [16 U.S.C. 661–666c] [PL 85–624] 49 USC 47106(c)(1)(B) (former Airport and Airways Improvement Act of 1982, section 509(7)(A))	40 CFR parts 110–112, 116, 117, 122, 129, 136, and 403	Environmental Protection Agency. State and Tribal Water Quality Agencies.

17.1 Requirements

The Federal Water Pollution Control Act, as amended (commonly referred to as the Clean Water Act), provides the authority to establish water quality standards, control discharges, develop waste treatment management plans and practices, prevent or minimize the loss of wetlands, location with regard to an aquifer or sensitive ecological area such as a wetlands area, and regulate other issues concerning water quality.

If the proposed Federal action would impound, divert, drain, control, or otherwise modify the waters of any stream or other body of water, the Fish and Wildlife Coordination Act applies, unless the project is for the impoundment of water covering an area of less than ten acres. The Fish and Wildlife Coordination Act requires the responsible FAA official to consult with the Fish and Wildlife Service (FWS) and the applicable State agency to identify means to prevent loss or damage to wildlife resources resulting from the proposal.

If there is the potential for contamination of an aquifer designated by the Environmental Protection Agency (EPA) as a sole or principal drinking water resource for the area, the responsible FAA official needs to consult with the EPA regional office as required by section 1424(e) of the Safe Drinking Water Act, as amended.

Permits/Certificates: a. To comply with 49 USC 47106(c)(1)(b), formerly section 509(b)(7)(A) of the 1982 Airport Improvement Act, an airport sponsor proposing construction of a new airport, a new runway, or a major runway extension must obtain a water quality certificate from the State in which such airport projects would be located. The FAA can not approve these projects,

unless the sponsor has obtained that certificate. Environmental documents prepared for these projects must contain evidence from the governor or the agency responsible for protecting water quality that the project would be located, designed, constructed, and operated in compliance with applicable water quality standards.

Also, regardless of the type of airport project proposed, project proponents applying for a NPDES permit or a section 404 permit must obtain a water quality certificate (WQC) to comply with section 401 of the Clean Water Act. Section 401 requires issuance of a WQC as part of the permit issuance process.

b. A National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the Clean Water Act is required for point-source discharges into navigable waters. A section 404 permit is required to place dredged or fill material in navigable waters including jurisdictional wetlands (see 33 CFR 330.4 for information on water quality certificates requirements for Nationwide permits). A section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters.

c. Other State and local permits pertaining to water quality also may be required.

17.2 FAA Responsibilities

The EA includes sufficient description of a proposed action's design, mitigation measures, including best management practices developed for non-point sources under section 319 of the CWA, and construction controls to demonstrate that State or Tribal water quality standards and any Federal, Tribal, State, and local permit requirements will be met. Consultation

with the Federal, Tribal, State, or local officials will be undertaken if there is the potential for contamination of an aquifer designated by the EPA as a sole or principal drinking water resource for the area pursuant to section 1424(e) of the Safe Drinking Water Act, as amended. Consultation with appropriate officials is necessary to determine which permits apply. The EA reflects the results of consultation with regulating and permitting agencies and with agencies that must review permit applications, such as the FWS, the Army Corps of Engineers, and Tribal, State and local officials, which may have specific concerns. Such consultation should be started at an early stage of the EA. The responsible FAA Official must ensure that the applicable water quality certificate is issued before FAA approves the proposed action. For projects involving a new airport, a new runway, or a major runway extension, the responsible FAA Official must ensure the environmental document contains the reasonable assurance letter mentioned in paragraph 7.1 of this section.

17.3 Significant Impact Thresholds

Water quality regulations and issuance of permits will normally identify any deficiencies in the proposal with regard to water quality or any additional information necessary to make judgments on the significance of impacts. If the EA and early consultation show that there is a potential for exceeding water quality standards, identify water quality problems that cannot be avoided or satisfactorily mitigated, or indicate difficulties in obtaining required permits, an EIS may be required.

17.4 Analysis of Significant Impacts

When the thresholds indicate that the potential exists for significant water quality impacts, additional analysis in consultation with State or Federal agencies responsible for protecting water quality will be necessary. These

agencies may require specific information or studies.

In the MOA between the DOT and the Department of the Army on section 404 Permit Processing, there is a provision for elevating permit applications with the Department of the Army. When an Army District Engineer proposes to deny permit or condition one that

would cause substantial, unacceptable conditions to the DOT agency, the responsible FAA official shall advise the appropriate FAA program office in Washington, D.C. That office will provide whatever follow-up action may be necessary at the Washington, D.C., level to resolve the differences.

Section 18.—Wetlands

Statute	Regulation	Oversight agency
Clean Water Act, section 404 [33 U.S.C. 1344] [PL 92–500, as amended by PL 95–217 and PL 100–4] Rivers and Harbors Act of 1899, section 10 Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961)	33 CFR parts 320–330 Order DOT 5660.1A, Preservation of the Nation's Wetlands	Army Corps of Engineers. Coast Guard. Environmental Protection Agency.

18.1 Requirements

Executive Order (E.O.) 11990, Order DOT 5660.1A, the Rivers and Harbors Act of 1899, and the Clean Water Act address activities in wetlands. E.O. 11990 requires Federal agencies to ensure their actions minimize the destruction, loss, or degradation of wetlands. It also assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, funding, and operation of transportation facilities and projects (7 CFR part 650.26, August 6, 1982). Order DOT 5660.1A sets forth DOT policy that transportation facilities should be planned, constructed, and operated to assure protection and enhancement of wetlands.

Typically, the FAA or an airport sponsor applies for a section 404 permit for projects requiring dredge or fill activities in jurisdictional waters after the NEPA document has been approved. There are benefits, however, to developing the permit application earlier in the process. Time savings and reduced controversy may outweigh the extra effort required to address section 404 considerations as an integral part of the NEPA process. When the two processes are integrated effectively, the Corps' approval of the permit can be concurrent with or closely follow FAA's approval. The Army Corps of Engineers may adopt the FAA's final NEPA document when making a 404 permit decision, thereby avoiding the need to prepare additional NEPA documents. For further information see 33 CFR part 320, *General Regulatory Policies* (COE), 33 CFR part 325, Appendix B, NEPA Implementation Procedures for the Regulatory Program, chapter 11 of the Federal Highway Administration

guidance cites 40 CFR 80 and 230, Regulatory Program: Applicant Information, pamphlet EP 1145–2–1, May 1985, U.S. Army Corps of Engineers; 40 CFR 1500.2, and E.O. 12291.

On December 13, 1996, the Army Corps of Engineers published a final rule reissuing and substantially revising the nationwide permit program (NWP) under the Clean Water Act.

The FAA promotes wetland banking as a mitigation tool for aviation-related projects that must occur in wetlands due to aeronautical requirements (e.g., unavoidable construction of a runway in a wetland due to prevailing wind). The FAA has developed a policy supporting the use of a wetland banking mitigation strategy (internal Letter of Agreement, dated July 1996). Wetland mitigation banking provides a way to mitigate wetland impacts *before* those impacts occur. Purchasing credits from a bank does not give the purchaser title to wetlands tracts that comprise a bank, however, it does fulfill the requirements of law and is cost effective. Rather, the purchase is simply a payment to the wetland banker for wetland mitigation services that the bank provides. The purchase of credits from an approved bank signifies that the section 404 permittee has satisfied its permit-required mitigation obligations. Copies of this policy are available from FAA's Office of Airport Planning and Programming, Community and Environmental Needs Division, APP–600, or the Office of Environment and Energy, Environment, Energy, and Employee Safety Division, AEE–200, 800 Independence Ave., S.W., Washington, D.C. 20591.

Permits/Certificates: a. A section 404 permit is required to place dredged or

fill material in navigable waters, including wetlands, and a section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters. If a section 404 permit and a section 10 permit are required, then the section 10 permitting process is typically combined with the section 404 permitting process of the Corps of Engineers. However, if only a section 10 permit is needed, then the FAA should follow the Coast Guard's section 10 procedures.

b. Other State and local permits pertaining to wetlands may also be required.

18.2 FAA Responsibilities

Early review of proposed actions will be conducted with agencies with special interest in wetlands. Such agencies include State and local natural resource and wildlife agencies, the FWS, the NMFS, the Coast Guard, the Corps of Engineers, and EPA. This review may be combined as much as possible with the State and local officials. Specific consultation is required under the Fish and Wildlife Coordination Act with the FWS and the State agency having administration over the wildlife resources.

If the action requires an EA, but it would not affect wetlands, the EA should contain a statement to that effect. In that case, no wetland impact analysis is needed.

If there is uncertainty about whether an area is a wetland, the local district office of the Army Corps of Engineers or a certified wetland delineation specialist must be contacted for a delineation determination (or the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service

(NRCS), formerly the Soil Conservation Service (SCS) to delineate wetlands on agricultural lands). The EA includes information on the location, types, and extent of wetland areas that might be affected by the proposed action. This information can be obtained from the FWS or State or local natural resource agencies.

If the action would affect wetlands and there is a practicable alternative that avoids the wetland, this alternative becomes the environmentally preferred alternative. The EA should state that the original project would have affected wetlands, but selection of the practicable alternative enabled the project proponent to avoid the wetlands.

If the action would affect wetlands and there is no practicable alternative, all practical means should be employed to minimize the wetland impacts due to runoff, construction, sedimentation, land use, or other reason. The EA or EIS must contain a description of proposed mitigations, with the understanding that a detailed mitigation plan must be developed to the satisfaction of the 404 permitting agency and those agencies having an interest in the affected wetland.

Impacts of wetlands can be assessed by using the function and values of the wetlands area as a basis to determine significance. If wetlands functions are large in number and the value of these functions is high, it would be appropriate to conduct further study as part of an EIS. For example, the action would substantially alter the hydrology, vegetation, or soils needed to sustain the functions and values of the affected wetlands or the wetlands it supports. Conversely, if wetlands functions are few in number and the value of these functions is low, an EA concluding in a FONSI would be appropriate. For example, the action would not cause substantial increases in sedimentation or siltation in wetlands or waters connected to the affected wetland.

18.3 Significant Impact Thresholds

A significant impact would occur when the proposed action causes *any* of the following:

a. The action would adversely affect the function of a wetland to protect the quality or quantity of municipal water supplies, including sole source, potable water aquifers.

b. The action would substantially alter the hydrology needed to sustain the functions and values of the affected wetlands.

c. The action would substantially reduce the affected wetland's ability to retain flood waters or storm-associated runoff, thereby threatening public health, safety or welfare (this includes cultural, recreational, and scientific resources important to the public, or property).

d. The action would adversely affect the maintenance of natural systems that support wildlife and fish habitat or economically-important timber, food, or fiber resources in the affected or surrounding wetlands.

e. The action would promote development of secondary activities or services that would affect the resources mentioned in items (1) through (4) in this section.

f. The action would be inconsistent with applicable State wetland strategies.

18.4 Analysis of Significant Impacts

An agency having expertise in wetland impacts or resources may indicate that the action has potential significant wetland impacts. The responsible FAA official shall consult with that agency and, as necessary, the FWS, the Corps of Engineers, EPA, or NRCS (if wetlands are on agricultural lands), and State and local natural resource or wildlife agencies to make a determination on severity of wetland impacts. If the action is on tribal lands, then the responsible FAA official must consult with tribal natural resource and wildlife representatives. Any of these

agencies may become a cooperating agency due to their expertise or jurisdiction. Permitting agencies may also become cooperating agencies. To the extent practical, the responsible FAA official will ensure that the environmental document meets the needs of the consulted agencies as well as those of the FAA. Scoping is encouraged to meet the needs of the permitting and cooperating agencies. Detailed analysis should include the following, as applicable:

a. Considerations specified in E.O. 11990, Protection of Wetlands.

b. An opinion should be issued, based on the above considerations, on the action's overall effect on the survival and quality of the wetlands.

c. Aeronautical safety, transportation objectives, economics, and other factors bearing on the problem.

d. Further consideration of the practicability of any alternatives.

e. Inclusion of all practicable measures to minimize harm.

f. Pursuant to the Fish and Wildlife Coordination Act, the FAA applies the instructions contained above.

For any action which entails new construction located in wetlands, a specific finding should be made including: (1) there is no practicable alternative to construction in the wetland, and that (2) all practicable measures to minimize harm have been included. The proposed finding should be included in the final EIS or FONSI.

When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the FAA shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Section 19.—Wild and Scenic Rivers

Statute	Regulation	Oversight agency
Wild and Scenic Rivers Act of 1968 [16 U.S.C. 1271–1287] [PL 90–542 as amended by PL 96–487]	36 CFR part 297, subpart A (USDA Forest Service) [DOI NPS, BLM, and FWS regulations to be inserted] Department of the Interior and Department of Agriculture, Wild and Scenic River Guidelines for Eligibility, Classification and Management of River Areas (47 FR 39454, September 7, 1982)	Department of the Interior, National Park Service, Fish and Wildlife Service, and Bureau of Land Management. Department of Agriculture, Forest Service. Council on Environmental Quality.

Statute	Regulation	Oversight Agency
	CEQ Memorandum on Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, August 11, 1980 (45 FR 59190, September 8, 1980) CEQ Memorandum on Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, August, 11, 1980 (45 FR 59191, September 8, 1980)	

19.1 Requirements

The Wild and Scenic Rivers Act, as amended, describes those river segments designated or eligible to be included in the Wild and Scenic Rivers System. Under section 5(d)(1), the Department of the Interior (DOI) National Park Service (NPS) River and Trail Conservation Assistance Program (RTCA) within NPS's National Center for Recreation and Conservation (NCRC) maintains a Nationwide Rivers Inventory (NRI) of river segments that appear to qualify for inclusion in the National Wild and Scenic River System but which have not been designated as a Wild and Scenic River or studied under a Congressional authorized study. Some section 5(d) rivers (i.e., those eligible for designation as Wild and Scenic Rivers) may not be included in the NRI maintained by the NPS.

The President's 1979 Environmental Message Directive on Wild and Scenic Rivers (August 2, 1979) directs Federal agencies to avoid or mitigate adverse effects on rivers identified in the Nationwide Rivers Inventory as having potential for designation under the Wild and Scenic Rivers Act. The August 11, 1980 CEQ Memorandum on Procedures for Interagency Consultation requires Federal agencies to consult with the NPS when proposals may affect a river segment included in the Nationwide Rivers Inventory. The Nationwide Rivers Inventory is included on the Rivers and Trails Conservation Assistance Program's webpage at www.ncrc.nps.gov/rtca/nri. For those rivers or river segments which are not study rivers or designated rivers, and are not included in the NRI, the responsible FAA official should contact the Federal agencies and State or States having jurisdiction over the river to determine what the status of the river or river segment is.

Under section 7, the responsible FAA official must obtain a section 7 determination from the Federal agencies that administer designated or study rivers. The Federal agencies include the USDA Forest Service (USFS), DOI Bureau of Land Management (BLM),

DOI NPS, and DOI Fish and Wildlife Service (FWS). States also administer Wild and Scenic Rivers or segments of such rivers and should also be consulted. Note that for study rivers, Congress will, in the act authorizing the study, have designated a specific agency as the lead and the responsible FAA official should initiate consultation with that agency. Designated Wild and Scenic Rivers and study rivers are listed in the NPS's Wild and Scenic Rivers Program website at www.nps.gov/rivers along the specific Federal and State agencies that have jurisdiction over each.

Section 12 of the Act requires a Federal agency with jurisdiction over any lands which include, border upon, or are adjacent to any river included, or under study for inclusion in the Wild and Scenic Rivers System to take action necessary to protect such river in accordance with the purposes of the Act. In addition, Federal agencies are required to cooperate with the Secretary of the Interior and appropriate State agencies for the purpose of eliminating or minimizing pollution in protected Inventory rivers. All agencies shall, as part of their normal environmental review processes, consult with the DOI (National Park Service (NPS)) and other Federal and State agencies having jurisdiction prior to taking any actions which could effectively foreclose or downgrade wild, scenic, or recreational river status of rivers in the Wild and Scenic Rivers System, study rivers, river segments in the Nationwide Rivers Inventory, or rivers or river segments otherwise eligible under section 5(d) for inclusion in the Wild and Scenic Rivers System but not on the NRI or under study.

Permits/Certificates: Not Applicable.

19.2 FAA Responsibilities

As soon as it appears that the proposed action could affect: (1) a Wild and Scenic River, (2) a river or river segment under study for inclusion in the Wild and Scenic River System, (3) a Nationwide Rivers Inventory river segment, or (4) an otherwise eligible

river, the responsible FAA official should identify the Federal agency having jurisdiction over the river if on Federal land or the State and contact them for verification of the status of the river or river segment and jurisdiction for further consultation. If the NPS or other Federal and State agency having jurisdiction indicates that the proposed action could affect a Wild and Scenic River, a study river, a river segment in the Nationwide Rivers Inventory, or an otherwise eligible river or river segment, the responsible FAA official should consult with the appropriate agency for guidance as to avoiding or minimizing impacts.

For designated Wild and Scenic Rivers, rivers on the NRI, and otherwise eligible rivers, the responsible FAA official must consult with the specific Federal agency having jurisdiction over Wild and Scenic Rivers (e.g., the state district office of the BLM and the regional offices of the USFS, NPS, and FWS).

For study rivers, the responsible FAA official should initiate consultation with the agency designated by Congress as the lead for the study.

For rivers on the NRI, see the CEQ Memorandum on Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory and the CEQ Memorandum on Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory. If no river in the NRI is adversely affected or the impact is not considered severe enough to preclude inclusion of the affected river segment in the Wild and Scenic River System or downgrade its classification (e.g., from wild to recreational), no further analysis is necessary. Consultation with NPS will determine whether or not the impact on any NRI river is significant.

For rivers or river segments that are eligible under section 5(d) but not on the NRI, the responsible FAA official should consult with the agency or agencies having jurisdiction over the river or river segment.

19.3 Significant Impact Threshold

(No specific thresholds have been developed.)

19.4 Analysis of Significant Impacts

Under the CEQ Memorandum on Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, when consultation with DOI leads to a determination that the effects on a NRI river segment are significant, or would preclude inclusion in the Wild and Scenic River System or downgrade its classification, the FAA should invite the NPS and any affected land management agencies to be cooperating agencies. If the NPS does not respond to such request for assistance within 30 days, then the FAA may proceed as otherwise planned, taking care to avoid or minimize adverse effects on the National Inventory river. For projects requiring EISs, the record of decision must adopt appropriate avoidance and mitigation measures and a monitoring and enforcement program.

The process is significantly impacted when an agency with the jurisdiction over a designated or eligible river segment does not issue a consent determination for the proposed action as required by section 7 of the Wild and Scenic Rivers Act and the impact cannot be mitigated to acceptable levels. If the circumstances exist, the FAA cannot proceed with the proposed action.

For eligible wild, scenic, and recreational river areas not included in the NRI, the responsible FAA official should consider the potential effects on the river area.

For Wild and Scenic Rivers, study rivers, NRI rivers under section 5(d)(1), and otherwise eligible rivers or river segments under section 5(d), the responsible FAA official must obtain a section 7 determination that the proposed action will not have a direct and adverse effect on the values for which the river was or might be established or otherwise invade the river area, or for designated rivers, unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968.

Appendix 2—[Reserved]

Appendix 3. Airports Environmental Handbook 5050.4A

1. Explanation

FAA Airports Program personnel, airport sponsors, and others involved in airport actions are directed to FAA Order 5050.4A (or subsequent revisions to it), Airport Environmental Handbook. FAA Order 5050.4A is a self-contained

document that includes the policies and procedures of FAA Order 1050.1E as they relate to airport actions. Order 5050.4A contains descriptions of the types of airport actions which require an EA, or an EIS and those which are categorically excluded, and detailed information on the form and content of environmental documents prepared for airport actions. Compliance with FAA Order 5050.4A, or subsequent revisions to it, constitutes compliance with FAA Order 1050.1E for airport actions.

2. Reserved

Appendix 4. FAA Guidance on Third Party Contracting for EIS Preparation

1. Introduction

a. The Council on Environmental Quality (CEQ) regulation 40 CFR section 1506.5(c) states that any environmental impact statement (EIS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) shall be prepared directly by a lead agency, upon request of the lead agency a cooperating agency, or a contractor selected by the lead agency.

b. The intent of CEQ section 1506.5(c) is to avoid conflicts of interest by those preparing impact statements. Contractors must be able to sign a disclosure statement (see 1506.5(c); appendix 8 to this order)

c. The following guidance is provided to ensure FAA's continued compliance with the CEQ regulations and NEPA.

2. General Guidance

a. The FAA must either prepare an EIS in-house (utilizing agency personnel and resources) or select a contractor to prepare the EIS. One method of selecting a contractor that may be used is known as "third party contracting."

b. "Third party contracting" refers to the preparation of an EIS by a contractor selected by the FAA and under contract to and paid by an applicant (e.g., airport sponsor, applicant, air carrier). Through the statement of work, the contractor is made responsible to the FAA for preparing an EIS that meets the requirements of the NEPA regulations, the FAA's NEPA procedures, and all other appropriate Federal, State, and local laws. Since this process is purely voluntary, it is recommended that an agreement to use this process, establish a scope of work, and delineate the FAA and applicant responsibilities be formalized by a Memorandum of Understanding (MOU) between the FAA and the airport sponsor. The CEQ recognizes the third party contracting arrangement as a legitimate method of EIS preparation in which the non-Federal applicant actually executes the

contract and pays for the cost of preparing the EIS (see CEQ "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (46 FR 18026); appendix 9 to this order).

c. The FAA's selection of a contractor under this process may be pursued by the FAA's evaluation of a preselection list ("short list") of contractors submitted to the FAA by an airport applicant based on the sponsor's request for proposal (RFP) and evaluation. The applicant may submit the list of candidates to the FAA ranked according to the sponsor's evaluation of the contractors qualifications. The FAA, however, is under no obligation to make a selection based on this ranking. The applicant also may submit the list of candidates to the FAA in an unranked form.

d. Costs for preparing the EIS are paid by the applicant. For airport development projects and related activities, EIS may be funded by either Airport Improvement Plan (AIP) funds or local funds including Passenger Facility Charge (PFC) revenues. While AIP funds may be used to pay for costs associated with EIS preparation by a contractor selected by the FAA, Federal procurement requirements do not apply. Federal agencies are permitted under 40 CFR Part 18 to substitute their judgment for that of the grantee (i.e., airport) if the matter is primarily a "Federal concern" (i.e., consultant selection by FAA to comply the requirement of CEQ section 1506.5(c) is a "Federal concern"). Furthermore, a CEQ memorandum on this subject specifically states that Federal procurement requirements do not apply[[we need a citation here]].

e. Guidance provided in the most current version of FAA Advisory Circular 150/5100-14, Architectural, Engineering and Planning Consultant Services for Airport Grants Projects, shall be followed in selecting a contractor for EIS preparation.

f. When an EIS is prepared by a contractor, the FAA is still responsible for:

- (1) Obtaining a "disclosure statement" from the contractor,
- (2) Exercising oversight of the contractor to ensure that a conflict of interest does not exist,
- (3) Taking the lead in the scoping process,
- (4) Furnishing guidance and participating in the preparation of the EIS,
- (5) Independently evaluating the EIS and verifying environmental information provided by the applicant, or others, adding its expertise through review and revision, as necessary,

(6) Approving the EIS, and
(7) Taking responsibility for the scope
and content of the EIS.

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