

Update on Environmental Regulations

Northwest Mountain Region Airports Conference

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Subject Matter for Today's Presentation

- Airports Environmental Handbook, FAA Order 5050.4B
- Environmental Streamlining
- Delegation to Regions of FAR Part 150 Noise Compatibility Programs
- Consultant Conflict of Interest Issues
- Environmental Assessments

FAA Order 5050.4B

Vision 100, Century of Aviation Reauthorization Act (P.L. 108-176, September 12, 2003)

- Directed publication of agency final order 1050.1E within 180 days of the Act & draft order 5050.4B within 180 days of the issuance of 1050.1E
- Final order 1050.1E issued June 8, 2004.
- Draft order 5050.4B issued December 16, 2004.
- Final order 5050.4B to be issued by April 28, 2006.

FAA Order 5050.4B

Vision 100

- Current status:
 - * Revised final order sent to CEQ on 2/27/06
 - * CEQ comments received 4/5/06
 - * Final order to CEQ for certification 4/14/06
 - * CEQ certification 4/21/06
 - * Federal Register publication 4/28/06

Environmental Streamlining

FAA Initiative

- May 18, 2001 Report to Congress
- Outlined initiatives for reducing environmental processing
 1. EIS teams; major runway projects at large hub airports
 2. Reallocate airports staff
 3. Maximum use of consultants
 4. Improve interagency coordination
 5. Issue recommended best practices for EIS preparation and management.

Environmental Streamlining

DOT Initiative

Executive Order 13274; Environmental Stewardship & Transportation Project Reviews (September 18, 2002)

“To promote environmental stewardship in the Nations transportation system and expedite environmental review of high-priority transportation infrastructure projects.”

Environmental Streamlining

DOT Initiative

- DOT Secretary designates high priority transportation projects to receive expedited review.
- Federal agencies shall to the maximum extent practicable expedite their reviews.
- Interagency task force established to:
 1. Monitor & assist agencies to expedite reviews.
 2. Identify & promote policies that can streamline environmental approval.

Environmental Streamlining

DOT Initiative

- Three airports w/projects were selected (LAX, PHL, & SGU). LAX & one-project at PHL have been completed.
- Lessons learned:
 - * Designation brought about additional attention & commitment by participating agencies & task force.
 - * Tone is set in the process by involving senior management-early!
 - * Use of a facilitator tends to neutralize “Us vs. Them”.

Environmental Streamlining

DOT Initiative

Lessons learned (cont'd):

- * Identified issues of importance & area(s) of jurisdiction for each agency.
- * Important to cultivate good working relationships w/agencies before problems arise.
- * Set realistic schedules and stick to them.
- * Formalize a process for the elevation & resolution of issues.

Environmental Streamlining

Vision 100

Title III, Aviation Streamlining Approval Process Act of 2003.

Congress recognizes the importance of airports to the economy; the priority of capacity projects to ease congestion; need for the environmental process to address concerns; & the need for cooperative work among the FAA, airports, & all levels of government.

Environmental Streamlining

Vision 100

- FAA is directed to encourage construction of capacity projects at congested airports.
- Process envisions concurrent reviews, analyses, permitting, etc. as much as possible, & setting specific deadlines with involved agencies & airport sponsors.
- A capacity project at a congested airport *shall be* subject to streamlining review

Environmental Streamlining

Vision 100

- Engage Federal/State agencies involved w/the project; make them aware of their responsibilities.
- May elect to use an interagency EIS team to assist in preparing the EIS.
- FAA is the Lead Agency; participating agencies are bound by our analysis of “Purpose & Need” & determination of Alternatives.

Environmental Streamlining

Vision 100

- If deadlines are not met, the offending agency, the Senate & House Aviation Committees, & CEQ must be notified within 30 days. The offending agency is to respond w/in 30 days, explaining what happened and what corrective action is being taken.
- Current Vision 100 projects are: PHL, FLL, & IVP

Part 150 NCP Delegation

Noise Exposure Map (NEM)

- Since July 6, 1989 regions have had authority to find Noise Exposure Maps (NEMs) to be in compliance with FAR Part 150.

Noise Compatibility Plan (NCP)

- On March 28, 2006 Guidance was issued for delegation of the approval authority for Noise Compatibility Programs (NCPs) to the regions.

Part 150 NCP Delegation

Noise Compatibility Plan (NCP)

- The only exception on delegation is if the NCP contains a proposed mandatory noise or access restriction, in which case the responsibility for approval of the NCP remains in Washington.
- Timetable for the delegation of the NCPs:
 - * May 12, 2006 ~Each Airport Division is to submit draft written procedures for Hqs. review/approval.
 - * June 30, 2006 ~ Written procedures are approved (region-by-region). Delegation is in place nationally.

Part 150 NCP Delegation

Noise Compatibility Plan (NCP)

- Regional role does not change from present process until the start of the 180-day review.
- Draft ROA & NCP submitted to APP-600 at the end of the 60-day commenting period. General review to ensure measures are consistent with national policy (max. 30 days). Resolve issues, if any.
- Obtain signatures of Regional Counsel and Airports Division Manager.

Part 150 NCP Delegation

Noise Compatibility Plan (NCP)

- Remember – *If the FAA does not take action within 180 days, all measures are automatically approved, except for flight procedures!*
- APP-600 will update samples letters, Federal Register Notices, check lists, and other guidance and issue to specialists in the form of a desk reference.

Conflict of Interest Issues

Background

- CEQ regulations require contractors (consultants) selected to assist in preparing an EIS to avoid any conflict of interest with their EIS responsibilities.
- Consultants are to execute a Disclosure Statement prepared by the Federal agency.
- The statement specifies the firm has no financial or other interest in the outcome of the project, i.e., the project covered by the EIS.

Conflict of Interest Issues

Background

- Avoidance of a conflict of interest ensures a better & more defensible EIS.
- It helps ensure the public that the EIS has been prepared free of subjective, self-serving research & analysis.
- EISs prepared by parties who would suffer financial losses could easily lead to a public perception of bias.

Conflict of Interest Issues

Background

- Financial or other interest in the outcome of the project is interpreted broadly to cover any known benefits other than general enhancement of professional reputation....

such as a promise of future design or construction work on the EIS project, as well as indirect benefits the consultant is aware of, i.e., the project would aid proposals sponsored by the firm's other clients.

Conflict of Interest Issues

Master Planning

- *Can a firm involved in developing initial data, or planning for an airport be selected to assist in preparing an EIS for a project associated with the planning?*

Yes, If the firm does not have a financial interest in the outcome of the EIS project & the firm was selected by FAA under a competitive process.

Past or ongoing planning work does not necessarily constitute a conflict of interest.

Conflict of Interest Issues

On-Call Planning

- *Would a firm that has an on-call planning contract with an airport have a conflict of interest in preparing an EIS for a Project at that airport?*

Not quite as simple or clear. Depends on the planning scope of services.

Sounds benign, but not if subsequent planning task orders involve projects dependent on or associated with the EIS project, in which case the consultant would have a potential conflict of interest.

Conflict of Interest Issues

Design Work (100% for Construction)

- *Would a firm that has a contract to design a project have a conflict of interest if it was seeking to be selected by the FAA to assist in preparing an EIS for that project?*

Yes.

- *Can a firm assisting the FAA in preparing an EIS be selected for designing the project covered by the EIS?*

Yes, if the consultants work on the EIS is completed & they have been released from their EIS contract & the firm is selected under a competitive process.

Conflict of Interest Issues

Design Work (Preliminary)

- *Can a firm that the FAA has selected to assist in preparing an EIS do preliminary design work for the EIS project?*

Yes, only if the work is necessary for purposes of performing environmental analysis associated with the EIS. Talking about 10 to 25% design; any more would lead to a conflict of interest.

Conflict of Interest Issues

Part 150 Studies

- *Can a firm that prepared a Part 150 study at an Airport be selected to assist the FAA in Preparing an EIS at the Airport?*

Yes, even if 150 study is undertaken concurrently with the EIS.

Conflict of Interest Issues

Timing of Disclosure Statements

- Historically submitted at the time the short-list of firms is submitted to FAA for our evaluation/selection, however...
- A Consultant should not have to wait until then to find out if they have a problem or potential problem.
- Time, effort & costs go into responding to RFPs. When requested we should help consultant determine their situation.

Conflict of Interest Issues

Timing of Disclosure Statements

- Consultants, however, will need to submit information in a timely manner to help FAA determine if there is a likely problem.
- The disclosure should should clearly state the scope and extent of the firm's prior, existing and/or proposed work at or in the vicinity of the Airport.
- Seek advice if their are questions. This is one situation where it is not easier to ask for forgiveness than to seek permission.

Environmental Assessments

Quality of Assessments

- Some are very good, some are very poor. Most require a fair amount of review and revision, which can be a time consuming process for all.
- Recently a number of losses in the courts have been associated with EAs and the FAAs subsequent issuance of a FONSI/ROD, fact that has not gone unnoticed.
- It is our belief that both the quality and timeliness of the documents, as well as the likelihood of success if legally challenged, is tied to a few simple factors.....

Environmental Assessments

Quality of Assessments

1. Scoping...Scoping with the FAA. What are our expectations?
 2. Coordination~Early and Often. FAA & Resource Agencies.
 3. Consultant Selection~Emphasis should be on expertise.
- Very simple, but yet seemingly so difficult to sometimes do.