



# Federal Aviation Administration

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## Memorandum

FAA Order 1050.1E, Change 1 Guidance Memo #2<sup>1</sup>

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To: FAA NEPA Practitioners and Managers

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Subject: **Guidance on Preparing Focused, Concise and Timely Environmental Assessments**

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This Memorandum serves as guidance to promote the preparation of focused, concise and timely Environmental Assessments (EAs) for proposed FAA actions. It is intended to supplement existing DOT and FAA Orders and guidance, as well as regulations and guidance of the Council on Environmental Quality (CEQ). It does not create any new requirements.

FAA EAs have steadily grown in size and complexity. As defined in the CEQ regulations implementing the National Environmental Policy Act (NEPA), an EA is a “*concise public document*” that “*briefly* provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9(a) (emphasis added). An EA must include “*brief* discussions” of the need for the proposed action, alternatives to the proposed action, and the potential environmental impacts of the proposed action and alternatives. 40 C.F.R. § 1508.9(b) (emphasis added). In addition to these specific directions for EAs, the CEQ regulations also contain more general admonitions regarding the importance of reducing paperwork—e.g., by “[d]iscussing only briefly issues other than significant ones”—and reducing delay—e.g., by setting time limits for deciding whether to prepare an EIS. See 40 C.F.R. §§ 1500.4(c), 1500.5, 1501.8(b)(2)(i).<sup>2</sup> These concepts are also emphasized in subsequent CEQ guidance,<sup>3</sup> as well as in DOT and FAA orders and guidance for implementing NEPA.<sup>4</sup>

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<sup>1</sup> This document is guidance memo 2 for FAA Order 1050.1E (Change 1). It is the second in a series of memos to provide additional clarifying guidance on FAA’s NEPA requirements, procedures, and practices.

<sup>2</sup> See also 40 C.F.R. § 1500.1(b) (“Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.”).

<sup>3</sup> See, e.g., Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations (March 23, 1981), Questions 35, 36a, and 36b. More recently, CEQ has re-emphasized these concepts in the context of

Consistent with the CEQ regulations and applicable guidance, FAA offices should be preparing environmental assessments that consider all impact categories for applicability and significance, but focus analysis on those environmental impact categories where there is potential for significant impacts caused by the proposed action. In addition, the document should be concisely written using plain language. Adhering to both of these principles should yield a more concise and timely environmental review. All EAs should focus on the core elements of an EA (Section 1508.9(b) listed below. (Note that this is not as extensive an outline as for an Environmental Impact Statement).

EA core elements:

- A brief discussion of the need for the proposed action.
- Proposed action and reasonable alternatives (including the no action alternative).
- The environmental impacts of the proposed action and alternatives.<sup>5</sup>
- A list of agencies and persons consulted, and preparers.

These are discussed in FAA Order 1050.1E, sections 404 and 405.

In its documentation of the environmental impacts of the proposed action, the EA shall acknowledge that the FAA considered and reviewed all environmental impact categories in accordance with FAA Order 1050.1E, Appendix A. FAA Order 1050.1E lists all potential impact categories. However, it is not the intent for all categories to require detailed discussion or analysis. The EA should concentrate on areas where there may be significant environmental impacts, or where there are uncertainties that require evaluation.

Paragraph 404c of Order 1050.1E states that “a brief statement describing the factual basis for the conclusion that the action is not likely to cause environmental impacts” should be provided where this is the case.

If an impact category is not relevant to the proposed action, it should be briefly noted and no further analysis is required. For example, it is not necessary to provide descriptive paragraphs on federal wetlands protection and requirements if there are no wetlands in the project area.

When a resource is present, but it would clearly not be affected, it should be briefly noted and no further analysis is required. It is appropriate to state that a category or multiple categories of potential impacts are not discussed in detail in the EA because the proposed action would not result in impacts on those resources. For resources not affected, the following statement is sufficient: “The no action, proposed action, and reasonable alternatives would not affect: [list the resources.]”<sup>6</sup> Where there are some anticipated effects to a resource, but those effects are clearly below thresholds of significance defined in Order 1050.1E, that fact should be briefly documented with an explanation that thresholds would not be reached or exceeded.

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emergency actions, forest health projects, and projects under the American Recovery and Reinvestment Act of 2009. (CEQ September 8, 2005, “Preparing Focused, Concise and Timely Environmental Assessments.” [http://ceq.hss.doe.gov/nepa/regs/Preparing\\_Focused\\_Concise\\_and\\_Timely\\_EAs.pdf](http://ceq.hss.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf))

<sup>4</sup> See Department of Transportation Order 5610.1C, para. 5(c), and FAA Order 1050.1E, para. 404.

<sup>5</sup> This includes the baseline environmental condition, and may include mitigation.

<sup>6</sup> E.g., Order 5050.4B, chapter 7, page 8.

The bulk of the EA should focus on impacts that may be significant, but this documentation should also be as concise as it can be while still providing a legally sufficient basis for determining whether an EIS is required.<sup>7</sup> A brief discussion should be provided explaining the criteria considered, and the review or analysis that has been performed, in enough detail to determine and convey to the EA reviewer whether or not impacts are significant.<sup>8</sup> If they are not significant, a FONSI can be issued—ending the EA process. Alternatively, if one or more significant impacts are identified that cannot be sufficiently mitigated below significant levels, an EIS must be prepared for the proposal and the EA should be discontinued. Information in the EA should provide a useful starting point for the EIS.

FAA environmental specialists should keep in mind that NEPA may not be the only environmental compliance requirement for a proposed action. If an action involves resources protected by special purpose laws (e.g., the Endangered Species Act), then the EA should also include the necessary assessment and documentation (e.g., FAA Order 1050.1E, para. 404(f)).

In conclusion, this guidance does not create a new requirement or new type of document; instead it serves to promote and encourage the preparation of Environmental Assessments that are focused and concise in accordance with CEQ guidance and the existing FAA Order. We hope this guidance will assist practioners in more efficiently and effectively meeting the Agency's NEPA requirement. If you have any questions, please contact Michon Washington at ext. 79548.

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<sup>7</sup> According to the U.S. Court of Appeals for the D.C. Circuit, for an EA to be a legally sufficient basis for a finding of no significant impact (FONSI), it must reflect that the FAA: (1) accurately identified the relevant environmental issues; (2) took a "hard look" at those issues; and (3) has a "convincing case" for a FONSI. *Town of Cave Creek v. FAA*, 325 F.3d 320, 327 (D.C. Cir. 2003).

<sup>8</sup> CEQ guidance does recognize that there are times when a lengthy EA may be appropriate, i.e., "where a proposal is so complex that a concise document cannot meet the goals of Section 1508.9 and where it is extremely difficult to determine whether the proposal could have significant environmental effects." Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (March 23, 1981), Question 36b. That guidance also notes, however, that a lengthy EA usually indicates that an EIS is needed. *Id.*