

U.S. Department of Transportation
Federal Aviation Administration
Northwest Mountain Region
Denver Airports District Office

Finding of No Significant Impact/
Record of Decision

For the Airport Reference Code Upgrade Project at
Canyonlands Field
Moab, UT

August 2017

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I. Introduction

This document serves as the Federal Aviation Administration's (FAA) Finding of No Significant Impact/Record of Decision (FONSI/ROD) and provides final agency determinations and approvals for the federal actions necessary to implement the proposed Airport Reference Code Upgrade Project at Canyonlands Field (CNY), owned and operated by Grand County (Airport Sponsor). This FONSI/ROD is based on the information and analysis contained in the attached Final Environmental Assessment (FEA), dated August 2017. This FEA has been prepared in accordance with the guidelines and requirements set forth by the Council on Environmental Quality (CEQ) and the FAA to implement the environmental review and disclosure provisions of the National Environmental Policy Act of 1969 (NEPA).

The Bureau of Land Management (BLM) was a cooperating agency for the EA. The FAA worked with the BLM to outline the roles and responsibilities of each agency for the EA process. The FEA meets the requirements of the FAA. The BLM will determine if the FEA meets their requirements and issue its own finding.

II. Background

CNY is a publically owned and operated commercial service airport located in Grand County, Utah approximately 18 miles northwest of the City of Moab. CNY is owned and operated by Grand County and is located within unincorporated Grand County.

CNY serves as a major access point for residents and visitors to Grand County and Southeast Utah. In addition to the City of Moab, Arches and Canyonlands National Parks are both located within a short drive of CNY. The two National Parks attract a total of 1.5 million visitors per year. Additionally, Dead Horse State Park and Sand Flats Recreational Area (which includes the world-famous Slick Rock Biking Trail) are both located nearby.

Airside facilities at CNY include Runway 3/21 (7,100 feet long by 75 feet wide), taxiway system, aircraft parking apron and associated visual and electronic navigational aids. Landside facilities include terminal buildings, hangars, ground access routes, automobile parking areas, airport fencing, fuel farm and snow removal equipment storage facilities.

The FAA has the responsibility to maintain and enhance safety and security in air commerce (Title 49 USC § 40101(d)) while the BLM has the responsibility, under the Federal Land Policy and Management Act of October 21, 1976 and Section 516 of the Airport and Airway Improvement Act of September 3, 1982, to respond to a request for conveyance of lands and a request for a ROW grant authorizing use of public lands for airport purposes. The BLM controls a majority of the land the surrounds CNY.

III. Proposed Action

The Airport Reference Code (ARC) is a coding system used by the FAA to relate airport design criteria to the operational and physical characteristics of the airplanes that currently and are forecasted to operate at an airport. The ARC has two components. The first component is depicted by a letter (A-D) and relates to the aircraft approach speed. The second component is depicted by Roman numeral (I-IV) and relates to physical characteristics (aircraft wingspan or tail-height). CNY is a B-II airport.

CNY is proposing to change to an ARC of C-II to be able to better accommodate larger aircraft currently using and forecasted to use CNY. This change in ARC triggered the need to evaluate the runway length and safety area dimensions pursuant to FAA guidance and requirements. CNY is proposing the following improvements:

- Strengthening and widening Runway 3/21 from 75 feet to 100 feet;
- Temporarily displacing Runway 3 threshold by 539 feet and Runway 21 threshold by 252 feet including moving related airfield lighting and visual aids;
- Replacing the culvert under Runway 3/21 with a similar sized culvert;
- Widening taxiway fillets to 50 feet and minor apron expansion;
- Constructing blast pads on each runway end;
- Acquiring Bureau of Land Management (BLM) land;
- Realigning Blue Hills Road, a wash area and the perimeter fence; and
- Shifting Runway 3/21 260 feet to the southwest to remove the temporary displaced thresholds from both runway ends.

The project will be constructed in phases. The first phase will include the first five components. The acquisition of BLM land will occur next followed by the remaining components after the land is transferred.

IV. Purpose and Need (Chapter 1 of FEA)

The FAA has the responsibility to maintain and enhance safety and security in air commerce (Title 49 USC § 40101(d)). To meet this responsibility, the FAA has developed standards and recommendations for the design of civil airports to promote safety and security (Advisory Circular 150/5300-13A, *Airport Design*). The problem to be fixed (the need) is the ability of CNY to accommodate C-II aircraft. The overall project purpose is to achieve FAA design standards for C-II aircraft to enhance aviation safety at CNY.

V. Agency Actions and Approvals

The FAA actions, determinations, and approvals necessary for this project to proceed include:

- A determination that the environmental analysis prerequisites associated with any future Airport Improvement Program (AIP) funding application have been fulfilled pursuant to 49 USC 47101.
- Unconditional approval of the Proposed Action as shown on the Airport Layout Plan.
- Modifications to the procedures for the new thresholds.
- Relocation of NAVAIDS (Runway End Identifier Lights (REILs) on Runway 3 end). CNY has expressed interest in acquiring Runway 3 REILs prior to the construction.

VI. Alternatives (Chapter 2 of FEA)

In accordance with NEPA and FAA Orders 1050.1F and 5050.4B, the FEA identified and evaluated all reasonable alternatives.

A. Alternatives Examined but Eliminated from Detailed Study

- Alternative 2: Relocate and Improve the Airport at an Alternate Site

This alternative would meet FAA design standards but would require land acquisition and redevelopment of all existing facilities, which would result in significantly higher construction costs. Therefore, this alternative was eliminated from further analysis.

- Alternative 3: Use of Another Airport for Commercial Air Carrier Service
This alternative maintains CNY as a B-II airport and utilizes an alternate airport to accommodate CNY's commercial service needs. The two closest airports are B-II airports and would require upgrades similar to what is proposed for CNY. This alternative does not meet the purpose and need and has been eliminated from further analysis.
- Alternative 5: Upgrade ARC by Constructing a New Runway
This alternative would construct a new Runway 3/21 400 feet to the northwest of the existing runway. The runway would be 7,100 feet long by 100 feet wide and would meet ARC C-II design standards. This alternative is inconsistent with the County's plans for CNY, has a greater potential for adverse environmental impacts, requires substantially greater BLM land acquisition, and would cost significantly more to construct. For these reasons, this alternative has been eliminated from further analysis.

B. Alternatives Examined in Detail

- No Action Alternatives
The No Action Alternative assumes that existing conditions at CNY would remain. The No Action Alternative includes no development and no transfer of BLM property. Though the No Action alternative would avoid acquisition of BLM property it would not meet FAA design standards. Therefore, the No Action Alternative does not meet the purpose and need for the proposed project but will be carried forward to provide a baseline to determine potential impacts of the other alternatives.
- Alternative 4A: Upgrade ARC through use of Displaced Thresholds
This alternative would meet ARC C-II standards by strengthening and widening the existing runway from 75 feet to 100 feet. It also includes displacing Runway 3 threshold by 539 feet and the Runway 21 threshold by 252 feet to accommodate the Runway Safety Area (RSA) and Runway Object Free Area (ROFA). The taxiway filets would be widened and the apron would be slightly expanded to allow for wingtip clearance.
- Alternative 4B: Upgrade ARC by Shifting Runway 3/21 Southwest
This alternative would meet ARC C-II standards by widening and shifting the runway 260 feet to the southwest to clear the RSA and ROFA. The taxiway would also be shifted 260 feet to the southwest. Blue Hills Road, a wash area and the perimeter fence would be relocated. Approximately 45 acres of land would be acquired from the BLM.

C. Preferred Alternative (Chapter 2 of the FEA)

After careful consideration of the analysis of the impacts of the various alternatives considered and the ability of these alternatives to satisfy the identified purpose and need for the proposed action; and after review and consultation with various resource agencies, and after considering federal policy; the FAA hereby selects Alternatives 4A and 4B as the Preferred Alternative in the FEA for federal support. Alternative 4A would be constructed first, followed by Alternative 4B once the land from the BLM is acquired. Alternatives 4A and 4B – Proposed Action – will be referred to as Preferred Alternative for the remainder of the document.

VII. Affected Environment (Chapter 3 of the FEA)

CNY is located in Southeastern Utah in unincorporated Grand County, approximately 18 miles north of the City of Moab, three miles west of Arches National Park, and 18 miles northeast of Canyonlands National Park. CNY can be accessed by U.S. Highway 19. CNY is situated at 4,557 feet above Mean Sea Level (MSL) and located at 38° 45' 17.84" N Latitude and 109° 45' 17.43" W Longitude. According to 2015 Airport Master Records (5010), there are currently 34 based aircraft and approximately 15,250 annual aircraft operations by a combination of single and twin engine piston; turboprop; and business jet aircraft.

CNY is located in an attainment area for all criteria air pollutants. The land surrounding CNY is undeveloped and is compatible with CNY. Undeveloped portions of airport property are dominated by shrubland/grassland. There are no farmlands or floodplains on or near CNY. The Dakota Aquifer is located below CNY. There are several drainages on airport property.

For aviation noise, the yearly Day/Night Average Sound Level (DNL) is used. Typically the FAA uses the 65+ DNL contour for land use compatibility. The 65 DNL noise contour extends slightly beyond airport property. However, there are no noise sensitive land uses within the existing 65 DNL noise contour.

The following resources were determined not to be within the project area and were eliminated from further analysis (Section 4.2 of the FEA):

- Area of Critical Environmental Concern (BLM Specific Resource)
- BLM Natural Areas (BLM Specific Resource)
- Coastal Resources
- Compatible Land Uses
- Farmlands
- Fish, Wildlife and Plants (Threatened, Endangered, and Candidate Species)
- Floodplains
- Fuels/Fire Management (BLM Specific Resource)
- Wild and Scenic Rivers
- Wilderness Areas/Wilderness Study Areas (BLM Specific Resource)
- Woodland/Forestry (BLM Specific Resource)

VIII. Environmental Consequences of the Preferred Alternative (Chapter 4 of the FEA)

Environmental impact categories identified in FAA Orders 1050.1F and 5050.4B were evaluated. Environmental consequences of the No Action Alternative and the Preferred Alternative are included in Chapter 4 of the FEA. Below is a summary of the findings.

A. Air Quality (Section 4.3 of FEA)

All of Grand County, including CNY, is within attainment for all National Ambient Air Quality Standards. The Preferred Alternative is not anticipated to increase air traffic or airport related emissions over the No Action alternative. Therefore, it is expected that the Preferred Alternative will not adversely impact air quality.

B. Climate/Greenhouse Gases (Section 4.4 of FEA)

The Preferred Alternative would have a negligible change in the greenhouse gas emissions as there is no anticipated difference in operational levels when comparing the No Action with the preferred alternative. Furthermore, based on FAA data, operational activity at the Airport, relative to aviation throughout the United States, represents less than 0.05 percent of U.S. aviation activity.

C. Construction Impacts (Section 4.5 of FEA)

Earth-moving equipment would be active on site during construction, which may result in a temporary increase in noise and dust in the immediate project area. Best Management Practices (BMPs) will be utilized during construction to limit impacts. Traffic impacts are expected to be minimal during construction. Solid waste generated during construction would consist mainly of asphalt debris derived from the runway. These materials may be recycled or disposed of at a licensed industrial/demolition waste disposal facility. The contractor will be required to dispose of all construction waste in accordance with all applicable state and federal guidelines. The contractor will be required to obtain a Stormwater Construction Permit and follow all conditions of the permit during construction.

The Preferred Alternative would require Runway 3-21 to be closed during construction, which may temporarily impact airport users. Construction will be scheduled during periods of slower activity. It is estimated the runway would close on January 1st, 2018 and reopen on May 1st, 2018. These dates are subject to change depending on funding availability and/or other factors influencing construction, such as contractor selection and weather.

All construction impacts will be temporary and will subside once construction is completed.

D. Department of Transportation Act Section 4(f) (Section 4.6 of FEA)

The nearest Section 4(f) resource is Arches National Park (Arches), which is located approximately three miles east of CNY. The Preferred Alternative would not result in any direct impacts to Arches. A noise analysis was completed to determine if the Preferred Alternative would result in indirect impacts to Arches in accordance with the FAA Guidance on Procedures for Evaluating the Potential Noise Impacts of Airport Improvement Projects on National Parks and Other Sensitive Park Environments (2007). The minor changes identified did not exceed the threshold of significance.

E. Fish, Wildlife and Plants (Section 4.7 of FEA)

Phase II (Alternative 4B) would disturb up to approximately 22 acres of undisturbed common wildlife and habitat. There are no sensitive or unique wildlife or habitat within the project area. Unavoidable direct impacts to commonly occurring, less mobile and burrowing species may occur during construction. Pre-construction surveys and spatial/seasonal buffers would be utilized to minimize construction impacts. The Preferred Alternative would have no effect on Threatened, Endangered or Candidate species.

F. Hazardous Materials, Pollution Prevention, and Solid Waste (Section 4.8 of FEA)

The Preferred Alternative is not anticipated to generate appreciable amounts of hazardous materials. All generated wastes will be handled in accordance with appropriate federal, state, and local laws and regulations. There are no known hazardous materials located at CNY which would be impacted by the Preferred Alternative. There is the potential for an increase in solid waste generated by the larger future design aircraft; however, this is considered to be negligible. There would be no change in de-icing or hazardous materials from the future design aircraft.

G. Historical, Architectural, Archeological and Cultural Resources (Section 4.9 of FEA)

A cultural resource survey completed in August 2016 identified three prehistoric sites (42GR1759, 42GR2028 and 42GR2029) that were found to be eligible for listing on the National Register of Historic Places. The undertaking will directly impact Site 42GR2028 and a portion of Site 42GR1759. The proposed undertaking would result in the transfer of Site 42GR2029 out of federal ownership. The FAA determined that the Preferred Alternative would have an adverse effect on all three sites. A Memorandum of Agreement (MOA) and Historic Properties Treatment Plan (Treatment Plan) between the FAA, the BLM, the Utah State Historic Preservation Office (SHPO), and the Airport Sponsor is under development that will identify the appropriate mitigation for the impacts to the three pre-historic sites. The Hopi Tribe will be consulted throughout the development of the treatment plan and prior to any excavation work.

H. Light Emissions and Visual Impacts (Section 4.10 of FEA)

The minor shift in runway lighting will result in a negligible change in lighting. The level of change to the characteristic landscape created by the Preferred Alternative would be moderate and considered acceptable by the BLM.

The Old Spanish National Historic Trail (OSNHT) is part of the National Trails System and traverses CNY property. The OSNHT is a network of former trade routes that connected Santa Fe, New Mexico to Los Angeles, California. The FAA determined there would be no direct or indirect impact to the OSNHT. The OSNHT analysis was coordinated with the BLM, the NPS and the OSNHT Association. In addition, the OSNHT analysis was released for public review. No comments from the public were received.

I. Natural Resources and Energy Supply (Section 4.11 of FEA)

The Preferred Alternative would result in a minor, temporary increase in fuel consumption and use of natural resources during construction. The increase should be accommodated by existing supply and will not negatively impact the availability of the resource. Once the Preferred Alternative has been constructed, natural resource and energy supply consumption would return to within a negligible range of existing levels.

J. Noise (Section 4.12 of FEA)

While the Preferred Alternative would change the type of operations at CNY, the change in the 65 DNL contour is negligible when compared to the existing contour. The future 65 DNL contour does not include any noise sensitive properties. Therefore, no significant noise impacts are anticipated as a result of the Preferred Alternative.

K. Secondary (Induced) Impacts (Section 4.13 of FEA)

The Preferred Alternative is not expected to alter or shift population, housing and/or business development in the vicinity of CNY. Nor will it change the demand for public services. The land transfer will only transfer a small percentage of BLM property and enough land will remain to accommodate current users.

L. Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risk (Section 4.14 of FEA)

There will be no changes in population patterns or growth, disruption of existing communities or neighborhoods, displacement of existing populations, or relocation of residences or businesses associated with the Preferred Alternative. The analysis in the FEA found that there will be no disproportionate impacts to minority or low-income individuals. The Preferred Alternative does have the potential to establish reliable commercial service at CNY, which could have positive socioeconomic impacts for CNY and Grand County.

M. Water Quality (Section 4.15 of FEA)

The Preferred Alternative will slightly increase the amount of impervious surface, which will slightly increase in the amount of stormwater runoff. The existing drainage basin network would be able to accommodate the slight increase in stormwater runoff. All drainage features will be designed to meet FAA AC 150/5200-33B (*Hazardous Wildlife Attractants On or Near Airports*) to prevent a hazardous wildlife attractant from being created. The Preferred Alternative will not impact the two existing public drinking wells located at CNY.

N. Wetlands (Section 4.16 of FEA)

A survey of the project area, including BLM managed property, was completed in 2010. No wetlands were identified. There is an ephemeral water feature and a wash area, both are considered Waters of the US and fall under the jurisdiction of the US Army Corps of Engineers (USACE). The ephemeral water feature currently runs under Runway 3/21. The culvert will be replaced since it is at the end of its useful life. The wash area will be relocated during Phase II of the Preferred Alternative. Both impacts fall under USACE Nationwide Permit 3. Further coordination with USACE will take place prior to construction to secure the appropriate permits and complete any required mitigation.

O. Cumulative Impacts (Section 4.18 of FEA)

The cumulative impact analysis identified past, present, and reasonably foreseeable actions that could contribute to cumulative impacts to cultural resources, invasive species, lands/access, livestock grazing, migratory birds, recreation, socioeconomic impacts, Utah BLM sensitive species, and wetlands (Waters of the US). Significant cumulative impacts are not anticipated when the Preferred Alternative is considered with past, present and reasonably foreseeable actions.

IX. Environmental Mitigation (Chapter 4 of FEA)

The Airport Sponsor has committed to the following mitigation measures as part of the Preferred Alternative:

- Draft a Treatment Plan that outlines the appropriate mitigation for impacts to the three pre-historic sites. The Treatment Plan will be drafted in consultation with the FAA, the BLM, the UT SHPO and the Hopi Tribe. All mitigation will be completed prior to starting construction on Phase II.
- Complete pre-construction surveys and spatial/seasonal buffers would be utilized to minimize construction impacts to common wildlife and BLM sensitive species. Surveys will be coordinated with the FAA and the BLM prior to construction.
- Obtain a nationwide permit for all work within Waters of the US that fall under the jurisdiction of the USACE. All mitigation included in the permit that is approved by the USACE will be completed in accordance with the terms of the permit.
- Include Best Management Practices (BMPs) to limit construction impacts. The contractor would be required to carry out dust and erosion control procedures, such as watering to control dust, seeding with a temporary cover crop in work areas that are temporarily inactive, and installation/maintenance of silt fence. These requirements would be included in the project drawings and specifications under the FAA standard specification Item P-156, "Temporary Air and Water Pollution, Soil Erosion, and Siltation Control" (AC 150/5370-10).
- Develop a Storm Water Pollution Prevention Plan (SWPPP) in association with the NPDES Construction Permit.
- Design all water features to meet FAA AC 150/5200-33B (*Hazardous Wildlife Attractants On or Near Airports*).
- All phases of construction would be performed in accordance with FAA AC 150/5370-10, Standards for Specifying Construction of Airports.
- Contaminated soil and water will be handled and disposed of in accordance with applicable federal, state and/or local regulations.
- In the event that cultural or archaeological resources are discovered during construction, all work will stop until CNY notifies SHPO and the FAA Denver Airports District Office (DEN-ADO). CNY shall protect the area until cultural/archaeological resource concerns have been appropriately addressed, and CNY shall take action to comply with the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archaeological Resources Protection Act, as appropriate.
- During construction, in the event that previously unknown contaminants are discovered or if a reportable spill occurs, work shall cease until CNY notifies appropriate local, state, and Federal agencies.

X. Public and Agency Coordination

Public involvement is a vital component of the NEPA process. Public and agency coordination was conducted throughout the NEPA process. The Draft EA was released for agency and public review on June 13, 2017 for a 30-day comment period. To facilitate comments, the Airport Sponsor held a public open house on June 20, 2017. No formal comments were provided during the public meeting. No agency or public comments were received during the comment period (June 13 –July 13, 2017).

The OSHNT analysis was released for a 20-day public review period in July 2017. No public comments were received.

XI. Agency Findings

The FAA makes the following determinations for the project based upon careful review of the attached FEA, the supporting administrative record, and appropriate supporting information.

The following determinations are prescribed by the statutory provisions set forth in the Airport and Airway Improvement Act of 1982, as codified in 49 USC §47106 and 47107.

A. *The Project is reasonably consistent with existing plans of public agencies for development of the area surrounding the airport (49 USC §47106(a)(1)).*

The determination prescribed by this statutory provision is a precondition to agency approval of project grant funding applications. Extensive coordination regarding the Preferred Alternative has taken place among federal, state and local agencies. The Preferred Alternative is not in conflict with the comprehensive planning and goals of Grand County or BLM. Evidence of public and agency coordination can be found in Appendices A, C, E and H of the FEA.

The Grand County Planning Commission is designated as the Airport Zoning Commission as prescribed in Utah Code §72-10-405. CNY is designated as the Airport Limitation District. Grand County Land Use Code provides the restrictions that are included with this zoning designation.

The BLM approved a Moab Master Leasing Plan (MLP) in December 2016. The MLP was developed in close coordination with local stakeholders and will guide how the agency manages oil and gas development and potash mining on more than 785,000 acres of public land in southeastern Utah. This includes the area surrounding CNY.

The NPS has a General Management Plan for the Arches National Park that was approved in 1989. In 2013, the NPS developed a Foundation Statement to update the Arches National Park purpose, significance, resources and values to assist in future planning and management decisions.

B. The interests of the community in or near which the project may be located have been given fair consideration (49 USC §47106(b)(2)).

The determination prescribed by this statutory provision is a precondition to agency approval of airport development project grant funding applications. The Draft EA was published and made available for public review on June 13, 2017. The Airport Sponsor held a public meeting on June 20, 2017 after the release of the Draft EA (Appendix H). The public comment period ran from June 13, 2017 – July 13, 2017. No comments were received. In addition, the project has been discussed at numerous Grand County Commissioners meetings over the last year. Grand County, the City of Moab, and CNY all recognize that the Preferred Alternative has the potential to provide economic benefits to the CNY, the County and the City by providing reliable commercial service.

C. The airport sponsor has taken, or will take, actions to restrict land use in the airport vicinity, including adoption of zoning laws, to ensure the uses are compatible with airport operations (49 USC §47107(a)(10)).

The determination prescribed by this statutory provision is a precondition to agency approval of airport development project grant funding applications. As a recipient of AIP funding, the Airport Sponsor has signed grant assurances that require them to take appropriate action, to the extent reasonable, including the adoption of zoning laws, 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 Grand County Planning Commission is designated as the Airport Zoning Commission as prescribed in Utah Code §72-10-405. The Airport Zoning Commission recommend boundaries of the various zones to be established and the regulations to be adopted pertaining to any airport hazard area. The Airport Zoning Commission has designated CNY as an Airport Limitation District in the Grand County Land Use Code. The Land Use Code provides the limitations associated with the zoning designation Airport Limitation District (Article 4.3 AL, Airport Limitation District).

XII. Decision and Order

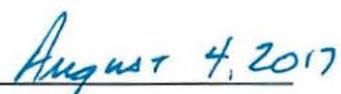
After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action, namely the Preferred Alternative, is consistent with existing national environmental policies and objectives as set forth in Section 101 (a) of NEPA and other applicable environmental requirements and is not a major federal action significantly affecting the quality of the human environment or otherwise, including any condition requiring consultation pursuant to Section 102(2)(c) of NEPA. As a result, the FAA will not prepare an Environmental Impact Statement.

This decision does not constitute a commitment of funds under the Airport Improvement Program (AIP); however, it does fulfill the environmental prerequisites to approve applications for grants of AIP funds for the proposed project in the future. (49 U.S.C § 47101)

Accordingly, under the authority delegated to me by the Administrator of the FAA, I approve and direct that agency action be taken to carry out implementation of the Preferred Alternative



David C. Suomi
Acting Regional Administrator
FAA Northwest Mountain Region



Date

Right of Appeal

This FONSI/ROD constitutes a final order of the FAA Administrator and is subject to the exclusive judicial review under 49 USC § 46110 by the US Circuit Court of Appeals for the District of Columbia or the US Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate US Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 USC § 46110. Any party seeking to stay implementation of the ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.