

## CHAPTER 2. SPECIAL NEPA REQUIREMENTS AND RESPONSIBILITIES FOR AIRPORT ACTIONS

### 200. GENERAL INFORMATION.

**a. FAA implementing procedures for NEPA.** NEPA places responsibilities on each Federal agency to comply with specific requirements as the agency carries out its mission. While CEQ has oversight responsibility for overall Federal NEPA compliance, FAA is responsible for applying NEPA to its particular programs and actions.

(1) FAA's decision making process for airport projects must consider the environmental, social, economic, and technical factors of a proposed action and those reasonable alternatives that meet the purpose and need. To do this, CEQ regulations allow FAA to adopt its own implementing procedures to supplement the regulations at 40 CFR, Part 1500 *et. seq.* FAA has done this in Order 1050.1E.

(2) Order 5050.4B supplements FAA Order 1050.1E. It provides detailed guidance on how FAA integrates NEPA into the planning and decision making processes for major Federal actions related to airports (see paragraph 9.g(1) – (11) of this Order). Order 5050.4B presents this information to ensure Office of Airports (ARP) personnel carefully consider and weigh environmental values and resources and other factors in a timely manner when evaluating proposed Federal actions at airports. These procedures are intended to guide ARP and other involved FAA organizations prepare and review environmental documents for airport actions. This ensures that FAA decisionmakers base their decisions on accurate and timely environmental information.

**b. Levels of NEPA processing for Federal actions at airports.** The Office of Airports (ARP) analyzes Federal airport actions that could potentially cause environmental impacts. To fulfill the terms of CEQ's NEPA regulations, ARP may: categorically exclude the action; require the airport sponsor to prepare an environmental assessment (EA) under FAA oversight; or prepare an environmental impact statement (EIS). Chapters 6, 7, and 9, respectively, of this Order discuss these NEPA reviews in detail.

### 201. AIRPORT SPONSOR RESPONSIBILITIES.

**a. General.** Airport sponsors, not FAA, own and operate public-use airports in the United States and its territories. As a result, airport sponsors are responsible for deciding when and where airport development is needed and for building and operating airport facilities. Airport sponsors may seek FAA approvals for changes to their Airport Layout Plans (ALP) or for Federal funds under the Airport Improvement Program (AIP) to build airport facilities. Sponsors may also seek approvals of ALP changes to accommodate airport projects funded by Passenger Facility Charges or other local funds.

**b. Environmental responsibilities.** Airport sponsors may request ARP ALP approval for the actions noted in paragraph 9.g. However, before ARP decides whether

to approve these actions, it must comply with NEPA and other applicable special purpose laws. As an applicant for Federal approval, an airport sponsor should take on some or all the following responsibilities.

(1) In consultation with ARP planners and environmental specialists, consider known environmental factors in early master planning efforts for proposed airport development projects (paragraph 504 of this Order). Doing so would help the sponsor:

(a) Identify obvious, specially-protected environmental resources such as Federally-listed endangered species, historic properties, wetlands, and parkland during the development's conceptual phase when the greatest range of alternatives exists.

(b) Consider practicable, possible, or prudent alternatives to avoid specially-protected resources. or

(c) Consider conceptual mitigation in project design to reduce unavoidable environmental effects if no practicable, possible, or prudent alternative exists.

(2) Provide environmental information to its consultant or to ARP.

(3) Prepare EAs or hire qualified environmental contractors to prepare those documents.

(4) Provide opportunities for public participation, and a public hearing, if one is appropriate.

(5) Consult with ARP personnel, and as needed, coordinate with Federal, State, and local agencies, Federally-recognized Tribes, and the affected community as described in this Order.

(6) Join ARP in a Memorandum of Understanding to pay the contractor ARP selects to help it prepare the EIS for a proposed action.

## **202. AIRPORT LAYOUT PLAN (ALP).**

**a. General.** An ALP identifies all existing and future runways, runway extensions, terminal buildings and other airfield facilities, and the descriptions of the development needed to support them. The ALP is for planning purposes only. It does not commit the airport sponsor to building any depicted airport facilities. Also, ARP's approval of an ALP does not commit ARP to contribute Federal financial support to the facilities the ALP depicts.

**b. NEPA compliance for ALP approvals.** As paragraph 9.g.(3) notes, FAA's conditional, unconditional, or mixed approval of an ALP is a Federal action subject to NEPA and other environmental laws.

**c. FAA's ALP approval choices.** The approving FAA official may issue a “conditionally” or “unconditionally” approve an ALP as discussed below. Also, that official may environmentally and unconditionally approve more immediate range development shown on an ALP, while deferring environmental action on later stages of proposed development depicted on the same ALP but not yet ripe for decision. This situation leads to the official a “mixed” ALP approval as discussed in paragraph 202.c(3).

**(1) Conditional ALP approval.** This approval signals that:

**(a)** The proposed ALP depicts features that are safe and efficient for airport operations and airport use.

**(b)** ARP has not yet completed its review of the environmental impacts the features depicted on the ALP would cause. ARP has not done so because the features are not yet needed and are not ripe for decision (see “tiering” paragraph 1403 of this Order for more information). or

**(c)** The approving FAA official has *not* authorized the airport sponsor or project proponent to begin building the facilities shown on the conditionally approved ALP. The sponsor or proponent may start building those facilities *only after* the ARP completes its environmental analysis of those facilities and the approving FAA official issues an unconditional approval of the ALP depicting those facilities.

Note: A conditional ALP approval normally qualifies as a categorical exclusion under the Administrative/General exclusions, FAA Order 1050.1E, paragraph 307.p. (also see Chapter 6, Table 6-1, of this Order). Because there is no reasonable expectation that the approval would cause environmental effects, it rarely involves extraordinary circumstances (FAA Order 1050.1E, paragraph 303d).

**(2) Unconditional ALP approval.** This approval signals that:

**(a)** The proposed ALP depicts features that are safe and efficient for airport operations and airport use and that the features are ripe for Federal decision.

**(b)** ARP has completed the environmental review process this Order requires for the near-term and immediate-term development that is ripe for decision. and

**(c)** The approving FAA official *has* authorized the airport sponsor or project proponent to begin building the facilities or equipment depicted on the unconditionally approved ALP.

**(3) “Mixed” ALP approval.** ARP would issue this approval when it unconditionally and conditionally approves the same ALP. ARP would likely issue this approval for ALPs resulting from master plans showing various airport development over a long period of time. In these cases, ARP would environmentally analyze and unconditionally approve the near-term and immediate-term development shown on an ALP that is ripe for decision. However, ARP would defer its environmental review of

the long-term development that is not yet ripe for decision. When issuing a “mixed ALP approval:”

(a) The approving FAA official would unconditionally approve that portion of an ALP depicting the proposed near-term and immediate-term development the sponsor proposes. But to do so, ARP must have completed its environmental review and make applicable assurances (e.g., those addressing Section 4(f), relocation, wetlands, floodplains, and coastal zone management programs) for those actions ripe for decision. If ARP has evaluated the environmental effects for all of the development on the ALP, the official would unconditionally approve the entire ALP. ARP urges sponsors or proponents to begin all of the unconditionally approved development within 3 years of the date ARP completes its environmental review for that development. If they do not, ARP would need to complete a written re-evaluation of or a supplement to the NEPA document ARP completed earlier when it unconditionally approved the ALP. (See paragraphs 1401 and 1402 of this Order for more information).

(b) The approving FAA official would conditionally approve that portion of the ALP depicting the long-term development that is not yet ripe for decision. Later, when the airport sponsor or proponent chooses to build this development, it must *first* obtain the official’s unconditional ALP approval for that development. To do so, ARP would have to complete the proper NEPA document, issue the proper assurances, and the official would have to unconditionally approve the ALP segments depicting the development that is now ripe for decision.

**(4) Limitations on ALP approvals.** The approving FAA official may not conditionally approve an ALP depicting a new airport, a new runway, or a major runway extension if any of those projects and their associated actions are the subjects of an EA or EIS that is being prepared. In these instances, the approving FAA official may unconditionally approve an ALP depicting those facilities and their connected actions, but only if FAA has issued a FONSI or ROD that is based on an EA or EIS that addresses those airport actions.<sup>1</sup> These limitation do not preclude ARP from taking any of the following actions:

(a) Approving ALPs depicting and approving Airport Improvement Program (AIP) or Passenger Facility Charge (PFC) funding for projects having independent utility from those the ongoing NEPA document is addressing. For purposes of this Order, a project has independent utility when the project has logical starting and end points and would have a useful purpose without relying on other transportation improvements.

(b) Issuing airspace determinations that focus on the effect of proposed major airport development projects on the safe, efficient use of the airport’s navigable airspace. or

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<sup>1</sup> Memo from Manager, Community and Environmental Needs Division, dated November 17, 2003, addressing Airport Layout Plan Approvals.

(c) Issuing written findings that ALPs depict features that are safe and efficient for airport operations and airport use.

**d. FAA's ALP approval letters.** These letters reflect FAA's decision on the proposed project's effect on airport utility as well as safe and efficient use of the airport and navigable airspace. They also reflect the status of FAA environmental reviews for facilities the ALP depicts.

**(1) A conditional ALP approval.** When the approving FAA official conditionally approves an ALP, the approval letter must specifically identify those items on the associated ALP that FAA has not environmentally analyzed. In addition, the ALP should be dated. Either the dated plans or an approval letter accompanying it should clearly indicate that the approving FAA official has conditionally approved the ALP and that the ALP is still subject to environmental review. The approval letter should include text similar to this:

"My signature on the enclosed ALP does not necessarily reflect the FAA's official views or policy, authorize construction of the development, nor constitute FAA's commitment to take part in the recommended development.

The actions listed below are subject to Federal environmental laws, statutes, and regulations. FAA first must make an environmental finding on these actions *before* the airport sponsor may begin them. To satisfy these responsibilities, FAA must complete the environmental process described in the most current version of FAA Order 5050.4.

(ARP suggests listing here those actions requiring FAA's written environmental approval).

"This approval does not cancel notice and review requirements that 14 CFR Parts 77 and 157 impose because they address all proposed structures shown on the ALP."

**(2) An unconditional ALP approval.** When the approving FAA official unconditionally approves an ALP, the letter must specifically state that fact. ARP suggests listing the facilities the official is unconditionally approving. A way to do so is to stamp the words, "UNCONDITIONALLY APPROVED" on the ALP and enter the date of that approval. Suggested language for the unconditional approval letter is:

"The Federal Aviation Administration (FAA) has completed its environmental review of the enclosed Airport Layout Plan (ALP) and has unconditionally approved the facilities listed below. Note the approval does not necessarily reflect FAA's official views or policy. Also note my signature does not constitute the FAA's commitment to take part in the recommended development.

This approval does not cancel notice and review requirements that 14 CFR Parts 77 and 157 impose because they address all proposed structures shown on the ALP."

(ARP suggests listing here those projects FAA is unconditionally approving).

**(3) A "mixed" ALP approval.** When the approving FAA official issues a "mixed" ALP approval, the letter must specify those projects that the decisionmaker has unconditionally and conditionally approved. Suggested language for a "mixed" ALP approval is:

"Due to the various timing of projects depicted on this ALP, I am issuing unconditional and conditional ALP approvals as described below. FAA has completed its environmental reviews of those projects that I have unconditionally approved. For FAA purposes, the sponsor may undertake only those projects that have received that approval. All other projects depicted on the ALP have not yet been environmentally reviewed. Therefore, I have conditionally approved them. For FAA purposes, the sponsor is not authorized to construct those projects until FAA unconditionally approves them.

Neither approval cancels notice and review requirements that 14 CFR Parts 77 and 157 impose because they address all proposed structures shown on the ALP."

(ARP suggests listing here those actions for which FAA has completed its environmental review (unconditionally approved) and those for which it has not (conditionally approved)).

**203. AIRPORT LOCATION APPROVAL.** An approving FAA official may approve an airport sponsor's request for first-time Federal aid for a public use airport listed in the NPIAS (see paragraph 9.b of this Order) at a location where no airport exists. However, the approving FAA official cannot do so until the responsible FAA official completes the proper environmental review. If an airport sponsor selects an airport location during the early stage of a master plan study, the environmental document prepared for the request for Federal aid must have the information necessary for FAA to analyze the proposed action and its reasonable alternatives. This information enables the approving FAA official to make an informed decision about funding for the site, the action's expected environmental impacts, and any required mitigation.

**204. LAND ACQUISITION.**

**a. General.** Airport sponsors may have the authority to buy or condemn land bordering their existing airports or to build a new airport at a new location without prior FAA approval. Title 40 CFR 1506.1(a) and (b) note that, until a Federal agency issues its Record of Decision, neither the agency or the applicant, respectively, may take action concerning any proposal that would have adverse environmental impact or limit the choice of reasonable alternatives.

**b. FAA responsibilities.** When ARP is notified or becomes aware of the possibility that an airport sponsor is about to buy land before ARP completes its NEPA process, the approving FAA official must advise the sponsor that:

**(1)** Actions that are inconsistent with the environmental policies of this Order could prejudice or preclude a favorable ARP decision on proposed changes in airport

layout or development that would use the land the sponsor bought or condemned or on sponsor requests for reimbursement for the property. and

(2) ARP will take appropriate action to insure that it achieves the objectives and meets the procedures of NEPA and applicable federal laws by:

(a) Carefully considering if the land acquisition would have adverse environmental impacts or limit the choice of reasonable alternatives, based on the manner in which the sponsor obtained the property before ARP makes any decision approving future FAA actions involving the property.

(b) Paying special attention to ARP responsibilities under Section 4(f) of the Department of Transportation Act to insure that a special effort is made to preserve the natural beauty of the countryside, public parks and recreation areas, wildlife and waterfowl refuges, and historic sites. and

(c) Paying special attention to sponsor actions involving wetlands, floodplains, coastal zones, endangered species, properties eligible for inclusion on the National Register of Historic Places, the provisions of Title VI of the Civil Rights Act of 1964, Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Areas*, and the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

**c. Sponsor responsibilities.** ARP will require a sponsor who has acquired or condemned land without prior FAA approval to demonstrate to the approving FAA official's satisfaction that the purchase was consistent with the environmental policies in this Order. The sponsor must also demonstrate that the purchase has not prejudiced the ARP's full and objective consideration of alternatives or limited possible implementation of a preferred alternative.

**205. JOINT-USE OR MILITARY CONVERSION PROGRAMS.** Public agencies may receive surplus, Federally-owned property for use as a public-use airport. The most current version of FAA Order 5150.2A, *Federal Surplus Property for Public Airport Purposes*, describes FAA's role in this process. Normally, the military service operating the base would be the lead agency for NEPA purposes. FAA would assume a cooperating agency role because of its expertise in determining the requirements for a publicly-owned, public use airport and the acreage needed for that development. In doing so, ARP must work closely with the lead agency and other agencies to fulfill its cooperating agency role.

**206. CONVEYANCE OF OTHER UNITED STATES GOVERNMENT LANDS.** Under 49 USC 47125(b), FAA may request another Federal agency to convey federally-owned land or airspace to an airport sponsor. FAA makes this request when it is necessary to carry out an airport development project at a public-use airport, to operate a public-use airport, or to develop an airport under the NPIAS. The Federal agency controlling the land will decide if the requested conveyance is consistent with its needs

and will notify FAA of its decision within four months after receiving FAA's request. FAA may not make conveyance requests for lands within national parks, national wildlife refuges, or other areas. FAA will not do so because these conveyances do not apply to land (or airspace) the Federal Government controls in a national park, national monument, national recreation area or similar area under the jurisdiction of the National Park Service. In addition, the conveyances do not apply to refuges under the jurisdiction of the U.S. Fish and Wildlife Service or a national forest or Indian reservation (see 49 USC 47125 (b)(1) – (3)).

**a. FAA instructions on transferring Federally-owned lands.** FAA Order 5170.1, *Transfer of Federal Lands, Section 23, of the Airport and Airway Development Act of 1970* (or later revisions), presents FAA's procedures for these land transfers. The Order states:

"Where there is other Government land adjoining the land being requested for an airport, an easement interest should be requested as necessary to protect the airport. This involves enough control to clear and protect the aerial approaches to the airport, to maintain freedom from electronic interference, or smoke-producing activities, and the right to overfly any land or any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport."

**b. Airport sponsor documentation.** The airport sponsor's conveyance request to FAA must include an EA, unless the proposed use of the conveyed land is either unchanged or the use is a categorical exclusion (see FAA Order 1050.1E, paragraph 307.c or Chapter 6, Tables 6-1 and 6-2 of this Order).

**c. FAA's role.** The responsible FAA official must consult with the Federal agency controlling the land. This assures that the environmental documentation for the proposed airport's use of the conveyed land meets the controlling agency's needs as well as FAA's. When the actions of the FAA and the agency controlling the land are connected, both agencies should cooperate to prepare a single NEPA document. If an EA or an EIS is needed, FAA may either act as joint lead agency with the controlling agency or as a cooperating agency with jurisdiction by law. FAA may request more information from the airport sponsor to complete its environmental impact analysis.

(1) The approving FAA official may include environmental mitigation measures as covenants in the deed or patent transferring the land. The AIP Grant Agreement for a proposed action may also include those covenants.

(2) To address the requirements of FAA Order 5170.1, *Transfer of Federal Lands*, the responsible FAA official must evaluate the need to buy more tracts necessary to ensure adjoining areas have airport compatible land uses.

## 207. RELEASES OF AIRPORT LAND.

**a. General.** An airport sponsor incurs specific obligations to use land for airport purposes when it accepts:

- (1) AIP financing to buy land for airport development.
- (2) AIP financing for any AIP-eligible airport development. or
- (3) A conveyance of Federal surplus property.

If an airport sponsor no longer needs airport land for aeronautical purposes, the sponsor may request that FAA release the land for sale or long-term lease for non-aeronautical uses.

**b. Long-term leases.** For purposes of this Order, airport land includes long-term leases for airport properties. In addition, FAA Order 5100-38C<sup>2</sup>, paragraph 711.c.(2) defines title to airport land to include a long-term lease provided, among other things, the lease has a minimum duration of 20 years from the date of the AIP grant. Therefore, before an airport sponsor may convert land dedicated to airport use (i.e. aeronautical activities and airline services) to non-aeronautical, revenue producing use (e.g., concessions, providing public shelter, ground transportation, food, or personal service businesses) under a long-term lease, the sponsor must obtain ARP approval. ARP must also release the sponsor from its federal grant assurance obligations addressing the uses of the land.

**c. ARP's approval.** When an airport sponsor seeks ARP approval to sell, lease or release airport land, the approving FAA official must decide if ARP will approve the airport sponsor's request and if ARP will release the airport sponsor from AIP grant obligations pertaining to the uses of that land. As part of this decision, the responsible FAA official must complete the following steps.

**(1) Land use restrictions and covenants.** The responsible FAA official must concur that the airport has kept adequate restrictions and covenants necessary for safe, efficient airport operations and noise compatibility purposes. The conveyance agreement and documents must contain adequate terms stating the purchaser/lessee (grantee) will adhere to all applicable laws for the use or development of the released land (e.g., environmental requirements, obtaining all necessary permits, etc.).

**(2) Enforcement.** The responsible FAA official must consider the extent of the Federal government's ability to enforce required restrictions and covenants after the airport land is released.

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<sup>2</sup>*Airport Improvement Program Handbook*, June 28, 2005.

**(3) Title covenants.** The responsible FAA official must review title covenants currently protecting aviation and determine ARP's ability to enforce these covenants after it allows the airport sponsor to release the land.

**(4) Potential uses of the land.** The responsible FAA official must analyze the environmental effects of the proposed release. To do so, the official evaluates the intended, reasonably foreseeable uses of the land. Therefore, the airport sponsor must advise the responsible FAA official of and provide information on the known plans for use of that land when the sponsor submits its request to FAA for release of the airport land. If none exists, the sponsor should provide zoning information for the land to show potential uses of the released land. This helps the official determine the likely, reasonably foreseeable land uses and make reasonable assumptions about the land uses local authorities would allow on the released land. This zoning information provides the best available information for FAA's evaluation of potential environmental impacts that would occur if FAA approves the land release.

**(5) Environmental analysis.** The responsible FAA official should review the submitted information and any necessary supplemental information needed to properly evaluate environmental effects of the subsequent use of the land the sponsor wishes to release. The official should then determine the proper NEPA process for the release.

**(a) Categorical exclusion.** Normally, FAA would categorically exclude land release requests (FAA Order 1050.1E, paragraph 307.b. and Chapter 6, Tables 6-1 or 6-2 of this Order). However, after reviewing the reasonably foreseeable uses of the property and extraordinary circumstance (see Chapter 6 and Table 6-3) on a case-by-case basis, the responsible FAA official may decide that an EA, at a minimum, is needed. For example, a proposed release of airport land for use as an industrial complex or a shopping mall may require air quality data and analyses associated with those land uses.

**(b) Contents of an EA or EIS.** In preparing EAs or EISs for these actions, the airport sponsor or the responsible FAA official, as appropriate, must coordinate with the Federal, state, and local agencies or Tribes having jurisdiction or special expertise regarding the environmental resources the release would affect.

1. The EA or EIS must show the airport sponsor or FAA has coordinated with the proper resource agency(ies) or tribes. Proof may be copies of agency and tribal comments and the airport sponsor's replies to those comments.

2. The EA and FONSI or EIS and ROD may include necessary mitigation measures. If the intended purpose of the released land meets needed mitigation measures, and an earlier approved environmental document addressed the measures, the responsible FAA official may use information from that document. The responsible FAA official may also use written re-evaluations of the document if appropriate (see Chapter 14 of this Order). Beyond environmental conditions, ARP should also include measures to protect the right of flight over the released land, if the approving FAA official decides these measures are needed. Such measures may include

the right to cause aircraft noise over the released land. They may also ban actions or erecting obstacles on the released land that could interfere with safe, efficient aircraft movement.

3. When FAA is not the lead agency for the release of airport land, it must be a cooperating agency or a joint-lead agency. When FAA is a cooperating agency, the approving FAA official may adopt the lead agency's environmental document, under 40 CFR 1506.3. To adopt the document, the responsible FAA official must independently review the document and determine its adequacy for FAA's purposes.

**208. AIRPORT ACTIONS SIGNIFICANTLY AFFECTING A FOREIGN COUNTRY.** When a proposed action is under the jurisdiction of the United States, NEPA requires analysis and disclosure of transboundary impacts.<sup>3</sup> FAA must comply with Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, dated January 4, 1979, when a major Federal action may cause significant environmental effects on a foreign country.

**a. General.** The Executive Order requires each Federal agency to set up internal procedures to address major Federal actions significantly affecting the environment outside the geographical borders of the United States, its territories, and possessions. The Executive Order applies when the affected nation does not join in or have any involvement in the action. The Executive Order:

(1) Heightens the approving FAA official's awareness of and interest in a foreign country's environmental concerns.

(2) Ensures the approving FAA official considers a proposed action's significant environmental effects on a foreign country during FAA's decision making process. and

(3) Promotes environmental cooperation between the United States and the affected country.

**b. Responsible FAA official duties.** The Executive Order and FAA Order 1050.1E, paragraph 521, provide more information on this issue. Paragraph 16 of the Executive Order requires the responsible FAA official to coordinate initial correspondence addressing environmental studies or documentation with the Department of State (DOS). For airport actions, ARP's Airports Planning and Environmental Division (APP-400) will conduct the coordination with the U.S. Department of Transportation's Office of Transportation Policy and Development (P-100), per Order 1050.1E, paragraph 521f. After DOS makes initial contact with the affected country, the responsible FAA official may directly forward to the affected country's civil aviation authority all requests for more information needed to prepare the EIS. As a courtesy,

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<sup>3</sup>Council on Environmental Quality *Guidance on NEPA Analyses for Transboundary Impacts*, July 1, 1997, memo.

APP-400 will provide copies of public hearing notices (if one is held) and copies of a draft and final EIS to that authority and the affected country's embassy in Washington, D.C.

**c. Addressing substantial differences.** The responsible FAA official should refer any substantial differences between the foreign country and FAA on the proposed action's significant environmental impacts to APP-400. In resolving these differences, APP-400 will consult the FAA Assistant Administrator for International Aviation (API) and, if necessary, the U.S. Department of Transportation.

**d. Actions not causing a significant impacts.** When the responsible FAA official determines the proposed airport development action or other airport action would not cause significant impacts abroad, the official must prepare a memorandum to API. The document must provide the underlying reasons for that determination. The responsible FAA should send the memorandum to APP-400, which will ensure API receives it.

**209. NEPA REQUIREMENTS AND WILDLIFE HAZARD MANAGEMENT PLANS.** Title 49 USC 44706 discusses FAA issuance of airport operating certificates to ensure safety in air transportation.

**a. Wildlife hazard management plans (WHMPs).** To implement section 44706, 14 CFR Part 139 prescribes rules governing the certification and operation of airports. Section 139.337 discusses the need to manage wildlife hazards on or near airports when aircraft collide with wildlife or birds or the size of wildlife or bird populations could cause collisions. When the FAA Administrator determines that an airport sponsor operating a certificated airport must prepare a WHMP to address these wildlife hazards, the sponsor must submit the WHMP to the Administrator for approval prior to implementation.

**b. NEPA requirements.** A grant to fund the preparation of a WHMP or the approval of that plan normally qualifies for categorical exclusion under Order 1050.1E paragraph 308e. However, airport layout plan approvals and/or approvals of grants for Federal funding to carry out measures in an FAA approved WHMPs include items that may be:

(1) Categorically excluded. or

(2) Require preparation of an environmental assessment or an environmental impact statement.

**210. THE STATE BLOCK GRANT PROGRAM.**

**a. General.** In its May 1992 Report to Congress on the State Block Grant Program (SBGP), FAA noted the AIP process was considerably more complex than it was in prior years. The Report noted the complexity was due to ARP's increasing

environmental and sponsor compliance requirements, which had substantially increased AIP-related workload. The Report noted, "...[t]he greater state role [under the SBGP] supplements limited FAA resources available to manage these expanding responsibilities."<sup>4</sup> The enabling statute limits the SBGP to non-primary airports. These are commercial service airports where less than 10,000 people board a commercial aircraft each year (49 USC 47102 (11)).

**b. SBGP purpose.** Title 49 USC 47128, authorizes FAA's current SBGP. FAA regulations at 14 CFR Part 156 discuss how ARP carries out the SBGP. Since the SBGP is now a permanent part of the AIP, paragraphs 1090–1099 of FAA Order 5100.38C, *Airport Improvement Program Handbook*, provide guidance for administering a block grant made under 49 USC 47128(b)(1).

**c. SBGP selection criteria.** Before selecting a state for participation in the program, 49 USC 47128(b)(4), requires the Secretary of Transportation to find, "...that the State has agreed to comply with United States Government standards for administering the block grant." The Secretary must also find, "...the State has an organization capable of effectively administering a block grant made under this section" (49 USC. 47128(b)(1)). To ensure SBGP participants meet contractually required Federal safety and other requirements, FAA (ARP) oversees each State's implementation of the SBGP.

**d. SBGP agency responsibilities.** Airport actions under the AIP that would normally be under ARP's scope (see paragraphs 210.d.(1) – (6)) become State actions under the SBGP. Therefore, states participating in the SBGP are responsible for the following airport actions at their non-primary airports:

- (1) Determining the eligibility and timing of airport actions.
- (2) Approving SBGP funds to finance airport actions.
- (3) Approving ALPs and changes to them.
- (4) Approving real property maps attached to ALPs.
- (5) Reviewing safety or phasing plans. and
- (6) Inspecting the airports for compliance with SBGP grant assurance obligations.

**e. SBGP participating states.** The SBGP initially included Illinois, Missouri, and North Carolina. Later, Congress authorized FAA to increase the number of participating states to 10 by 2001 and made the SBGP a permanent program (49 USC 47128). By 2001, Michigan, New Jersey, Pennsylvania, Tennessee, Texas, and

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<sup>4</sup> *Report to Congress: State Block Grant Program*. FAA. May 1992, p. 43.

Wisconsin had become SBGP participants. Since then, New Jersey has withdrawn from the SBGP.

**211. THE SBGP AND NEPA.** FAA's approval of block grants to participating states normally qualifies as a categorical exclusion (FAA Order 1050.1E, paragraph 307.o; Chapter 6, Table 6-1 of this Order). After distributing the SBGP grants, ARP has no control, responsibility, or discretion for the use of SBGP funds for airport specific projects under the SBGP. In fact, those airport-specific responsibilities ARP would normally fulfill under the AIP become State responsibilities under the SBGP. Therefore, NEPA and other environmental statutes applicable to "Federal actions" do not apply to airport actions under the SBGP, since there is not major Federal action.

**212. STATE BLOCK GRANT AGENCY ENVIRONMENTAL RESPONSIBILITIES.** Because FAA does not retain funding for or approval of SBGP actions, actions under the SBGP technically do not qualify as "Federal actions." Nevertheless, FAA, in consultation with CEQ, determined it to be good environmental policy and stewardship to require SBGP states that are not subject to state laws comparable to NEPA to consider the environmental consequences that SBGP actions would cause. As a result, each SBGP has contractually committed to consider the environmental effects of their actions as noted below.

**a. Meet the requirements of this Order.** This Order describes the duties ARP personnel must fulfill to comply with NEPA. It also mentions special purpose laws outside NEPA that protect specific environmental resources. Therefore, this Order provides SBGP personnel with information they must use to evaluate the environmental effects of SBGP actions in a comprehensive, interdisciplinary manner.

**b. "NEPA-like" states or agencies participating in the SBGP.** States or agencies having environmental laws similar to NEPA, within the meaning of CEQ 1506.2(c) ("NEPA like" states)<sup>5</sup> have contractually agreed to follow their NEPA-like state laws. The contracts also require these States to meet the requirements of special purpose laws outside NEPA because those special purpose laws would have applied to these airport actions had FAA remained responsible for them. Paragraph 9.t and Table 1-1 of this Order and Order 1050.1E, Appendix A provide information on the special purpose laws.

**c. "Non-NEPA-like" states or agencies participating in the SBGP.** States or agencies not having environmental laws similar to NEPA ("non-NEPA-like") have contractually agreed to meet the requirements of NEPA in this Order. They must also meet the requirements of special purpose laws outside NEPA that would have applied to the actions, had FAA been responsible for those actions. Paragraph 9.t and Table 1-1 of this Order and Order 1050.1E, Appendix A provide information on the special purpose laws.

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<sup>5</sup> North Carolina and Wisconsin are NEPA-like states. See <http://ceq.eh.doe.gov/nepa/states.html> for more information on NEPA-like states.

**d. Substitute text for SBGP actions.** When reading the instructions in this Order, SBGP personnel should substitute the words, “SBGP agency personnel” for the words, “responsible FAA official” or “approving FAA official” as needed. In addition, SBGP agency personnel should modify standard text that refers to FAA, FAA personnel, or Federal requirements (e.g., paragraphs 707.f, Figures 7-1 and 8-1, 802.g, 1007.a(1), 1007.a(4)) by substituting appropriate wording. The wording should clearly inform the reader that the State, not FAA, is taking an action or making a finding or decision regarding a particular airport action under the SBGP.

**e. Tribal consultation and SBGP actions.** When SBGP airport actions have connected actions that remain under FAA’s scope (paragraph 213), regional or district Airports office personnel will assist the FAA organization responsible for conducting the government-to-government consultation paragraph 303 of this Order discusses. This will ensure efficient consultation among the SBGP agency, the responsible FAA organization, and the Tribe. For airport projects having no FAA involvement, the SBGP agency is responsible for consulting with the Federally-recognized Tribe; however, regional or district Airports office personnel are available to support the SBGP agency, if needed. Although the Executive Order and the FAA order cited in paragraph 303 apply solely to Federal agencies, the information in paragraph 303 is useful for SBGP purposes. When consulting with Tribes for any reason, ARP recommends that SBGP agencies follow the instructions in paragraph 303 to ensure Tribal consultation occurs in a respectful manner.

**f. SBGP actions involving Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, and Archeological and Historic Preservation Act of 1974 and SBGP actions.** When SBGP airport actions have connected actions that remain under FAA’s scope (paragraph 213), the FAA organization is responsible for the connected action is responsible for conducting any necessary consultation and fulfilling requirements under these laws. Regional or district Airports office personnel are available to assist the responsible FAA organization as needed. For airport projects having no FAA involvement, the SBGP agency is responsible for complying with these laws as part of meeting their SBGP contractual commitments.

**213. FAA OVERSIGHT OF THE SBGP AND ACTIONS CONNECTED TO SBGP ACTIONS.** Although Congress authorized FAA to enter into contracts with states to administer the SBGP for certain non-primary airports, FAA remains responsible for the activities listed below and for overseeing the portion of the SBGP for which the participating state is responsible. This oversight is needed to ensure the participant is honoring its commitment to the contractual agreements it made when it became a SBGP participant (see paragraph 212). In addition, various FAA organizations retain oversight and NEPA responsibilities for the actions listed below because the actions are not authorized under the SBGP and are outside its scope.

**a.** SBGP airport actions for which the SBGP agency requests AIP discretionary funds to supplement SBGP funding for a specific airport project at a specific location and ARP provides those funds.

- b. Airport noise compatibility planning, including approval of airport noise compatibility programs under 14 CFR Part 150. (See FAA Order 5100.38C, paragraph 1096.c.).
- c. Airport land releases, including approval of such releases.
- d. Issuing Part 139 certifications.
- e. Installing or moving FAA-owned navigational equipment.
- f. Establishing or revising air traffic and flight procedures. and
- g. Completing airspace reviews for ALP approval under 14 CFR Part 157 and FAA Order 7400.2E, *Procedures for Handling Airspace Matters*.

Note: The regional or district Airports office overseeing the geographic area where the airport is located is responsible for the connected actions in paragraphs 213. a - d. The regional Air Traffic Organization office is responsible for the connected actions in paragraphs 213.e – g.

#### **214. ENVIRONMENTAL DOCUMENT PREPARATION FOR SBGP**

**ACTIONS.** Paragraph 213 lists those actions that may be connected to airport actions that are funded under the SBGP. Because those connected actions are outside the SBGP they remain under the purview of an FAA organization. Consequently, the SBGP agency should work cooperatively with the responsible FAA organization when preparing the necessary environmental document.

**a. An EA addressing actions solely under SBGP agency purview.** The SBGP agency is solely responsible for preparing the EA. The agency should follow the instructions in paragraph 212 as appropriate.

**b. An EA for actions involving an SBGP agency and an FAA organization.** Non-ARP organizations remain responsible for actions listed in paragraphs 213.d - f that are connected to an SBGP project. When actions outside the SBGP are connected to an SBGP action, the SBGP agency (or its consultant) will prepare the EA. The responsible FAA organization must independently review and take responsibility for the portions of the EA addressing the connected actions under that organization's authority. The responsible FAA organization will advise the EA preparers of revisions needed to ensure the EA addresses the organization's concerns and environmental needs.

(1) The SBGP agency would prepare the portions of the EA that address the airport actions listed in paragraph 210.d(1) – (6).

(2) Regional or district Airports officer personnel are responsible for the document or portions of it addressing impacts of actions listed in paragraph 213.a – d that are connected to the SBGP action.

(3) Non-ARP organizations are responsible for the document or portions of it addressing impacts of actions listed in paragraphs 213.e– g that are connected to the SBGP.

(4) If a Finding of No Significant Impact (FONSI) is appropriate, the SBGP agency prepares the portion of the FONSI addressing the airport actions specifically under the SBGP. Conversely, the responsible FAA organization prepares the portion of the FONSI for the non-SBGP actions. Then, the SBGP agency and FAA co-approve the FONSI. Here, the FAA organization retains responsibilities and approvals only for the portions of the proposed action not under the SBGP.

**c. SBGP actions causing significant impacts.** An SBGP action causing significant effects requires an EIS-like document or an EIS.

(1) If an EIS-like document is required because there is no connected Federal action, the SBGP agency should complete the following steps:

(a) If the action would occur in a “NEPA-like state,” the SBGP agency follows instructions in paragraph 212.b.

(b) If the action would occur in a state not having “NEPA-like laws,” the SBGP agency follows the instructions in paragraph 212.c.

(c) As needed, the SBGP may request help from the appropriate regional or district Airports office. Although those offices are not responsible for preparing the document, they have experience that may aid the SBGP agency in preparing the document. Airports office involvement may also help ensure efficient information exchanges and proper consultation among the SBGP, agencies, and interested parties occurs.

(2) If an EIS is required because there is a connected Federal action that remains under an FAA organization’s purview, the SBGP agency follows the instructions in paragraphs 214.c (1) (a) or (b), as appropriate. In addition:

(a) The FAA organization responsible for the connected action will be a joint-lead agency with the SBGP agency to ensure the document also meets the requirements of Order 1050.1E or Order 5050.4B, as appropriate.

(b) If no regional or district Airports office is involved in the SBGP action, the SBGP and/or the FAA organization should note that these Airports offices are available to assist in the NEPA process. Although they are not responsible for preparing the document, these offices have substantial experience in preparing EISs for airport actions. Their experience may also help ensure efficient information exchanges and proper consultation among the SBGP, the FAA organization, agencies, and interested parties occurs.

**5050.4B**

**04/28/06**

**215. - 299. RESERVED.**