



**U.S. DEPARTMENT OF TRANSPORTATION**  
**FEDERAL AVIATION ADMINISTRATION**  
National Policy

**ORDER**  
**1050.1E,**  
**CHG 1**

Effective Date:  
**March 20, 2006**

**SUBJ: Environmental Impacts: Policies and Procedures**

This order updates the FAA agency-wide policies and procedures for compliance with the National Environmental Policy Act (NEPA) and implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500-1508). The provisions of this order and the CEQ regulations apply to actions directly undertaken by the FAA and where the FAA has sufficient control and responsibility to condition the license or project approval of a non-Federal entity. The requirements in this order apply to, but are not limited to, the following: all grants, loans, contracts, leases, construction, research activities, rulemaking and regulatory actions, certifications, licensing, permits, plans submitted to the FAA by state and local agencies which require FAA approval, and legislation proposed by the FAA. The order was last revised in 2004.

The draft order was published in the Federal Register for public comment. The final order incorporates changes resulting from comments received from the public and during the internal FAA clearance procedure. The changes are annotated in the text with a bold line to the left of the paragraph containing the changed language. The change page can be found at the end of this document. The final order was published in the Federal Register and is available on the Internet at [http://www.faa.gov/regulations\\_policies/orders\\_notices/](http://www.faa.gov/regulations_policies/orders_notices/).

Marion C. Blakey  
Administrator  
Federal Aviation Administration

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## CHAPTER 1. GENERAL

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

**2. DISTRIBUTION.** Notice of promulgation and availability of this order is distributed to the assistant/associate administrators and their office and service directors, the Chief Operating Officer and vice-presidents of the Air Traffic Organization, and the Chairs of the Environmental Network. The order should be forwarded to all division managers, facility managers, and NEPA practitioners. The order is available in electronic form only. The order will be initially located for viewing and downloading at <http://www.aee.faa.gov>. If the public does not have access to the internet, they may obtain a computer disk containing the order by contacting the Office of Environment & Energy, 800 Independence Avenue S.W., Washington D.C. 20591. If the public is not able to use an electronic version, they may obtain a photocopy of the order, for a fee, by contacting the FAA's rulemaking docket at Federal Aviation Administration, Office of the Chief Council, Attn: Rules Docket (AGC-200) - Docket No. 29797, 800 Independence Avenue SW, Washington DC 20591.

**3. CANCELLATION.** Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, dated December 5, 1986, is cancelled.

**4. BACKGROUND.** NEPA and its implementing regulations, promulgated by CEQ in accordance with Executive Order (E.O.) 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by E.O. 11991 (sections 2(g) and 3(h)), May 24, 1977, establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, sometimes called "action-forcing" provisions (40 CFR 1500.1(a), 1500.3, and 1507) on how to implement the goals of NEPA. The major provisions include the requirement to use a systematic, interdisciplinary approach (section 102(2)(A)) and develop implementing methods and procedures (section 102(2)(B)). Section 102(2)(C) requires detailed analysis for proposed major Federal actions significantly affecting the quality of the human environment, providing authority to prepare environmental impact statements (EIS).

**5. SYNOPSIS OF MAJOR CHANGES.** This revision:

**5a.** Reorganizes to consolidate all categorical exclusions, including new and modified categorical exclusions for all FAA programs, into chapter 3 while eliminating the separate appendices and their respective categorical exclusions for each program.

**5b.** Reorganizes to place the types of actions that normally require preparation of EA's and EIS's for all programs into Chapters 4 and 5, respectively. Appendix 6 (Airports) of Order 1050.1D (which references FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985) is now incorporated under paragraph 214 of this order. Except for the procedures for internal FAA coordination and review of environmental documents in FAA Order 5050.4A (paragraphs 63, 64, and 95), if there is a conflict between Order 1050.1E and supplemental program guidance, Order 1050.1E takes precedence.

**5c.** Adds Tribes to the list of government agencies consulted in extraordinary circumstances determinations when actions are likely to be highly controversial on environmental grounds based on concerns raised by a Federal, State, or local government agency, Tribe, or by a substantial number of the persons affected by the action (see paragraph 304i); likely to violate Tribal water quality standards under the Clean Water Act and Safe Drinking Water Act (see paragraph 304h), or air quality standards established under the Clean Air Act Amendments of 1990 (see paragraph 304g); or likely to be inconsistent with any Tribal law relating to environmental aspects of the proposed action or Federal responsibilities toward Tribal trust resources. Includes new guidance on government-to-government consultation with Tribes, in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000 (65 FR 67249, November 9, 2000), and Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, dated April 29, 1994 (59 FR 22951, May 4, 1994) (see paragraph 213). Incorporates references to tribal consultation into Appendix A, section 11 on cultural resources, in accordance with regulations governing section 106 consultation under the National Historic Preservation Act (36 CFR part 800) and compliance with the Native American Graves Protection and Repatriation Act (43 CFR part 10), the American Indian Religious Freedom Act of 1978 (P.L. 95-341), and E.O. 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996).

**5d.** Provides guidance on intergovernmental review of agency actions that may affect State and local governments, in accordance with E.O. 12372, Intergovernmental Review of Federal programs (July 14, 1982), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities (see paragraph 213).

**5e.** Deletes from the characteristics for extraordinary circumstances those actions that are likely to be highly controversial with respect to availability of adequate relocation housing.

**5f.** Provides guidance for the option of documenting that a project qualifies for categorical exclusion (see paragraph 305).

**5g.** Adds new categorical exclusions and revises existing categorical exclusions to accommodate actions that do not significantly affect the environment. The new and revised categorical exclusions are the result of the accumulated environmental experience of the FAA's actions subsequent to the original issuance of FAA's categorical exclusions between 1973 and 1986. The new categorical exclusions are: paragraphs 307c, 307e, 307f, 307h, 307p, 307u, 310c, 310d, 310u, 310w, 310z, 311c, 311d, 311e, 311g, 311k, 311m, 311n and 312b. Categorical exclusions that were substantively amended are: paragraphs 307i, 307k, 307m, 307o, 309a, 309d, 309e, 310a, 310b, 310h, 310i, 310k, and 310p. Some of the amended categorical exclusions are

formed by combining two or more categorical exclusions from Order 1050.1D. Applicable actions of the Associate Administrator for Commercial Space Transportation were added to the categorical exclusions under paragraphs 308b, 309c, 309d, 309g, 309h, 310h, 310l, 310q, 310t and 311n. Previous categorical exclusions from Order 1050.1D that were determined to be no longer relevant (outdated; redundant) were not carried forward into Order 1050.1E. The deleted categorical exclusions were (as identified in Order 1050.1D): Appendix 1, paragraphs 5i, 5o, and 5s; Appendix 3, paragraphs 4b and 4h; Appendix 4, paragraph 4e and 4m; Appendix 5, paragraphs 4a, 4b, 4c, 4e and 4f; and Appendix 7, paragraph 4b. Two previously-listed categorical exclusions, one in Order 1050.1D (Appendix 3, paragraph 4a) and the other in Order 5050.4A (paragraph 23b(9)), were determined to be "advisory actions." These are removed from the list of categorical exclusions but are now properly identified as advisory actions in paragraph 301.

**5h.** Provides formal procedures for adopting draft and final EA's prepared by other agencies (see paragraph 404d), as recommended by CEQ in its Memorandum: Guidance Regarding NEPA Regulations (48 FR 34263, July 28, 1983).

**5i.** Provides a new optional procedure for preparing records of decision that meet the requirements of NEPA and constitute final agency orders subject to judicial review pursuant to 49 U.S.C. 46110. (see paragraph 408).

**5j.** Provides a new optional procedure for preparing scoping documents (see paragraph 505).

**5k.** Provides a new optional procedure for publishing records of decisions (ROD's) in the Federal Register (see paragraph 512e).

**5l.** Adds a requirement, pursuant to EPA filing guidance, to notify the EPA if the FAA adopts an EIS prepared by another agency (see paragraph 518h).

**5m.** Adds a new Appendix A, Analyses of Environmental Impact Categories. Appendix A contains an overview of procedures for implementing other applicable environmental laws, regulations, and executive orders in the course of NEPA compliance. Appendix A incorporates and updates Attachment 2 of Change 4 to Order 1050.1D, and amends each impact category to include a significant threshold paragraph where thresholds have been established.

**5n.** Adds a new subject, "Supplemental Noise Guidance." to the Noise section of Appendix A (see section 14). Supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the yearly day/night average sound level (DNL) contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no



single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

**5o.** Adds a reference to the use of demographic information of the geographic area of potentially significant impacts for purposes of anticipating and responding to public concerns about environmental justice and children in accordance with applicable Executive Orders, directives, and guidance issued by the CEQ and EPA. (see section 16 of Appendix A)

**5p.** Provides a new procedure for integrating Clean Water Act section 404 permitting requirements and NEPA (see section 18, Appendix A, Analysis of Environmental Impact Categories).

**5q.** Adds a new Appendix B, FAA Guidance on Third-Party Contracting, with a brief cross-reference in paragraph 204d. This appendix provides guidance on the use of third-party contractors in the preparation of NEPA documents consistent with 40 CFR 1506.5(c). Third-party contracting refers to the preparation of an EIS by a contractor selected by the FAA and under contract to, and paid for by, an applicant. Adds a new Appendix C providing an annotated list of generally applicable executive orders, DOT and FAA orders, memoranda of agreement or understanding, and related CEQ and FAA guidance.

**5r.** Adds a new Appendix D that describes Environmental Stewardship and Streamlining pursuant to provisions in "Vision100 - Century of Aviation Reauthorization Act" that give review priority to certain projects, require the establishment and management of review timelines, improve and expedite interagency coordination, reduce undue delays, emphasize accountability, and otherwise assist in facilitating environmental reviews. Adds a new Appendix E providing a list of acronyms.

**5s.** Adds guidance that gives special consideration to the evaluation of the significance of noise impacts on noise-sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties, and states that Part 150 land use guidelines and the DNL 65 dB threshold of significance for noise do not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

## **6. POLICY.**

**6a.** The FAA is responsible for complying with both the procedures and policies of NEPA and other related environmental laws, regulations, and orders applicable to FAA actions. The FAA decisionmaking process shall support public understanding and scrutiny, consider the effect of a proposed action and its alternatives on the quality of the human environment, avoid or minimize adverse effects of the proposed action, and restore and enhance resources and environmental quality. The FAA will integrate NEPA and other environmental reviews and consultations into agency planning processes as early as possible.

**6b.** The environmental review process outlined in this order will assure that NEPA and other environmental considerations are taken into account. (See Appendix A for these considerations.)

EIS's/ROD's and EA's/FONSI's document FAA compliance with these considerations and reflect a thorough review of all relevant environmental issues, using a systematic, interdisciplinary approach.

**6c.** Funding requirements will be justified and requested in accordance with existing budgetary and fiscal policies. Each FAA program office is responsible for seeking sufficient funds through the budget process to implement provisions of this order.

**6d.** The new and amended categorical exclusions, and paragraph 211 on reducing paperwork and paragraph 212 on reducing delays are consistent with the FAA's initiative to streamline the NEPA process that was announced by the Administrator in January 2001.

**6e.** For projects subject to environmental streamlining, the FAA will comply with all environmental protection requirements outlined in this order, will maintain the integrity of the environmental process, and will respect the environmental responsibilities of other agencies. Environmental streamlining will be used to give review priority to certain projects, manage timelines during the review process, improve and expedite interagency coordination, reduce undue delays, and emphasize accountability.

## **7. EXPLANATORY GUIDANCE.**

**7a.** This order sets forth policy and procedures for implementing NEPA. All FAA offices that have issued supplemental explanatory guidance for implementing NEPA within their programs must update their orders, policy and guidance, as appropriate, to be consistent with this revised order.

**7b.** A FAA program office may develop explanatory guidance to implement 40 CFR 1507.3 and this order.

**(1) Development of Explanatory Guidance.** The program office shall consult with AEE and AGC (Airports and Environmental Law Division, AGC-600) in developing explanatory guidance related to this order. Program offices are encouraged to publish notice of availability for comment of its proposed explanatory guidance in the *Federal Register*, and take other steps to seek public input during the development of its explanatory guidance.

**(2) Review.** The program office shall submit its proposed explanatory guidance to the Office of Environment and Energy (AEE) and the Office of the Chief Counsel (AGC) for a 60-day review period. If the Director of the Office of Environment and Energy (AEE-1) finds the explanatory guidance to be consistent with this order, after joint consultation with the AGC for legal sufficiency, AEE shall notify the program office and the program office may adopt these as its final explanatory guidance.

**(3) Notice.** If a program office chooses to publish its explanatory guidance in the *Federal Register*, that office shall notify the parties with whom it has consulted and publish availability of that guidance in the *Federal Register*.

## **8. SCOPE.**

The NEPA process addresses impacts of Federal actions on the human environment, including noise, socioeconomic, land uses, air quality, and water quality. Chapter 2 of this order presents an overview of the NEPA process. Depending upon the context and potential impacts, NEPA procedures can differ. Chapter 3 of this order addresses those types of FAA actions that do not normally require preparation of an EA or EIS, called categorical exclusions (see paragraphs 303 and 307-312) absent extraordinary circumstances (see paragraph 304). Chapters 4 and 5 of this order outline the processes for preparing EA's and EIS's. These procedures apply to classes of FAA actions that have or may have a significant impact on the human environment. Appendix A, Analysis of Environmental Impact Categories, presents, for each environmental impact category, brief descriptions of statutory and regulatory requirements and a list of agencies with specialized expertise or legal jurisdiction. Appendix B provides additional FAA guidance on third-party contracting. Appendix C provides an annotated list of generally applicable executive orders, DOT and FAA orders, memoranda of agreement or understanding, and related CEQ and FAA guidance. Appendix D provides a summary of the FAA Reauthorization Act, "Vision 100 -- Century of Aviation Reauthorization Act," signed December 12, 2003. Appendix E provides a list of acronyms.

**9. RELATION TO CEQ REGULATIONS.** This order implements the mandate of NEPA, as defined and discussed in the CEQ regulations, within the programs of the FAA. The order is not a substitute for the regulations promulgated by CEQ, rather, it supplements the CEQ regulations by applying them to FAA programs. Therefore, all program offices and administration offices shall comply with both the CEQ regulations and the provisions of this order.

## **10. AUTHORITY AND PROCEDURE FOR ISSUING CHANGES TO THIS ORDER.**

**10a.** When the Administrator has not specifically reserved authority to make changes or revisions, the Director of the Office of Environment and Energy (AEE-1) may issue changes or revisions to this order. When a change or revision may affect an office or offices, AEE must formally coordinate with that office to afford it an opportunity to review and discuss the proposed change.

**(1)** When a change or revision is substantial AEE must, in addition to the formal clearance procedures prescribed in Order 1320.1D, formally coordinate with the Office of the Chief Counsel (AGC), the Office of the Assistant Secretary for Transportation Policy (P-1) and the Office of the General Counsel (C-1), consult with CEQ and then publish the proposed change or revision in the *Federal Register* for public comment. After receiving all required FAA and DOT concurrences and after a finding of conformity is made by CEQ in accordance with 40 CFR 1507.3(a), the final change or revision may be published in the *Federal Register* and implemented.

**10b.** Each program office may submit to AEE proposed changes or revisions to this order. The Associate or Assistant Administrator for the requesting program office must provide AEE with a memorandum describing the proposed change, a detailed justification for the change, and comments from other program offices if the proposed changes or revisions affect them. AEE, in

cooperation with the requesting office, will process the proposed change or revision in accordance with the procedure prescribed in paragraph 10a.

## 11. DEFINITIONS.

**11a.** The terminology used in the CEQ regulations (see 40 CFR part 1508) and Title 49 of the United States Code is applicable.

**11b.** In addition, this paragraph defines basic terms used throughout this order, as follows:

**(1) Applicant.** A person, entity, organization, or government agency seeking FAA approval of a major Federal action. Examples include, but are not limited to, airport sponsors, airlines, or commercial launch license applicants.

**(2) Approving Official.** The FAA official with authority to approve findings of no significant impact (FONSI's) or environmental impact statements (EIS's) (see FAA Order 1100.154A, Delegation of Authority, which provides delegation of authority to agency officials to sign environmental documents).

**(3) Decisionmaker.** The FAA official with authority to approve a record of decision (ROD) or other types of formal decision documents for the agency (see FAA Order 1100.154A, Delegation of Authority, which provides delegation of authority to agency officials to sign environmental documents).

**(4) Environmental Due Diligence Audit (EDDA).** A systematic program for conducting environmental investigations of real property transfers. The purpose of the EDDA program is to help minimize environmental liabilities associated with such transfers. An EDDA is prepared using historical record searches, photographic interpretation, and site inspections to determine the likelihood of environmental contamination prior to real property transfers (acquisition by, or transfer to or from, the FAA). Where an EDDA has been determined necessary by the FAA, it will be incorporated by reference (see FAA Order 1050.19a, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, for further information on EDDA's).

**(5) Environmental Studies.** The investigation of potential environmental impacts to assist in determining the type of environmental review (see, e.g., 23 CFR 7.107(a)).

**(6) Human Environment.** The natural and physical environment and the relationship of people with that environment (see 40 CFR 1508.14).

**(7) Launch Facility.** The location on Earth from which a launch takes place, as defined in the terms and conditions of a license issued by the Secretary of Transportation, or designee, and the necessary facilities at that location to support the launch of commercial space launch vehicles.

**(8) Noise Sensitive Area.** An area where noise interferes with normal activities associated with its use. Normally, noise sensitive areas include residential, educational, health, and religious structures and sites, and parks, recreational areas (including areas with wilderness characteristics), wildlife refuges, and cultural and historical sites. For example, in the context of noise from airplanes and helicopters, noise sensitive areas include such areas within the Day Night Level (DNL) 65 noise contour. Individual, isolated, residential structures may be considered compatible within the 65 DNL noise contour where the primary use of land is agricultural and adequate noise attenuation is provided. Also, transient residential use such as motels should be considered compatible within the 65 DNL noise contour where adequate noise attenuation is provided. A site that is unacceptable for outside use may be compatible for use inside of a structure, provided adequate noise attenuation features are built into that structure. (See table 1 on land use in section 4 of Appendix A of this order; section 14 on noise in Appendix A; and 14 CFR part 150, Airport Noise Planning, Land Use Compatibility Guidelines). The FAA recognizes that there are settings where the 65 DNL standard may not apply. In these areas, the responsible FAA official will determine the appropriate noise assessment criteria based on specific uses in that area. (See also section 6.2i of Appendix A of this order for further guidance.) In the context of launch vehicle operations, noise sensitive areas may include such sites within approximately 40 miles of the launch site for launches of very large rockets, whereas noise sensitive areas may include such sites within approximately 2 miles of the launch site for launches of small rockets. In the context of facilities and equipment, such as emergency generators or explosives firing ranges, but not including aircraft, noise sensitive areas may include such sites in the immediate vicinity of operations, pursuant to the Noise Control Act of 1972, (See State and local ordinances, which may be used as guidelines for evaluating noise impacts from operation of such facilities and equipment.)

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

**(10) Tribe.** An American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or Community the Secretary of the Interior recognizes as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a. A Federally Recognized Tribe is eligible for the programs, services, and other government-to-government relationships established by the United States for Indians because of their status as Indians and tribes. Under the Federally Recognized Indian Tribe List Act, the Department of the Interior, Bureau of Indian Affairs, annually publishes a list of Federally Recognized Tribes in the Federal Register and maintains this list on its web site. The term “tribe” may also refer to State-recognized tribes under specific authorities for certain DOT programs, especially related to surface transportation that may be associated with a particular FAA project.

**12. APPLICABILITY.** The provisions of this order and the CEQ regulations apply to actions directly undertaken by the FAA and where the FAA has sufficient control and responsibility to condition the license or project approval of a non-Federal entity. The requirements in this order apply to, but are not limited to, the following: all grants, loans, contracts, leases, construction,

research activities, rulemaking and regulatory actions, certifications, licensing, permits, plans submitted to the FAA by state and local agencies which require FAA approval, and legislation proposed by the FAA. Exceptions to these requirements are listed in chapter 2. The procedures in this order shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date, except that this order does not apply to decisions made and final environmental documents issued prior to the effective date of this order.

**13.-199. RESERVED**

## **CHAPTER 2. NEPA PLANNING AND INTEGRATION**

### **200. INTRODUCTION.**

**200a.** This chapter guides the responsible FAA official, approving official, and decisionmaker in the NEPA process by determining the following:

(1) Whether an action is advisory (not subject to NEPA procedures), categorically excluded, or whether it requires an EA or an EIS.

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

(3) Which FAA office is responsible for NEPA compliance, including preparing environmental analyses and documents, ensuring public involvement, and completing interagency and intergovernmental coordination and consultation.

**200b.** FAA's primary mission is to assure aviation safety, security, and efficiency. NEPA compliance and other environmental responsibilities are integral components of that mission. NEPA assures informed decisionmaking. NEPA provides a means for assuring that environmental concerns and interests of the public, Federal, State, or local agencies, and Tribes are appropriately considered as part of the decisionmaking process. NEPA also provides a means for efficiently complying with related statutes, orders, and regulations. Effective, efficient, and timely environmental analyses, public involvement, and interagency and intergovernmental coordination depend upon determining the appropriate level of review early in planning, budgeting, and scheduling.

**200c.** In accordance with NEPA, environmental issues shall be identified and considered early in an action's planning process. Agencies shall use a systematic, interdisciplinary approach. As appropriate, agencies shall also involve local communities and coordinate with agencies and governmental organizations. Environmental permits and other forms of approval, concurrence, or consultation may be required, often from other agencies. Awareness of any applicable permit application and other review process requirements should be included in the planning process to ensure that necessary information is collected and provided to the permitting or reviewing agencies in a timely manner. This is especially true if applicable laws, regulations, or executive orders specify timeframes for these processes. Project proponents should prepare a list noting all obvious environmental resources the sponsor's proposed action and alternatives it proposes would affect, include specially protected resources. Proponents should complete these tasks at the earliest possible time during project planning to ensure full consideration of all environmental resources and facilitate FAA's NEPA process.

**200d.** The responsible FAA official can use the NEPA process most effectively as an umbrella or vehicle for giving appropriate consideration to specific environmental concerns by:

(1) Describing the agency's underlying purpose and need for taking action;

- (2) Identifying reasonable alternatives to the proposed action (must include the no action alternative);
- (3) Rigorously analyzing the reasonably foreseeable direct, indirect, and cumulative environmental impacts of the proposed action and alternatives
- (4) Providing for public disclosure and comment and a mechanism for responding to public comments;
- (5) Providing the basis for informed selection of the preferred alternative.
- (6) Identifying and evaluating measures to mitigate adverse effects of the preferred alternative and ensuring that appropriate measures are implemented.
- (7) Facilitating compliance with applicable environmental laws, regulations, and executive orders.

**200e. Applicability of NEPA Procedures to FAA Actions.**

(1) **Advisory Actions.** Some Federal actions are of an advisory nature. Actions of this type are not considered major Federal actions under NEPA, and categorical exclusions, EA's or EIS's are not required as a condition for taking the action. See paragraph 301 for further information on advisory action.

(2) **Emergency Actions** (other than those that fall under paragraph 307a). Section 1506.11 of Title 40 of the CFR allows CEQ to grant alternative arrangements for, but not eliminate, NEPA compliance where a national emergency, disaster, or similar great urgency makes it necessary to take actions with significant environmental impacts without observing other provisions of CEQ regulations. See paragraph 302 for further information on emergency actions.

(3) **FAA Actions Subject to NEPA Review** (categorical exclusions; environmental assessments; environmental impact statements). Unless otherwise excepted by CEQ regulations, all formal actions taken by FAA officials are subject to NEPA review unless statutory law applicable to the FAA's operations expressly prohibits or makes compliance impossible. Actions covered by NEPA review include grants, loans, contracts, leases, construction, research activities, rulemaking and regulatory actions, certifications, licensing, permits, plans submitted to the FAA which require FAA approval, and legislation proposed by the FAA.

(4) **FAA Actions Not Subject to NEPA Review.**

(a) judicial or administrative civil enforcement actions (i.e., Investigative and Enforcement Procedures under 14 CFR part 13, and other administrative actions pursuant to: 14 CFR part 14, Rules Implementing the Equal Access to Justice Act of 1980; 14 CFR part 15, Administrative Claims Under Federal Tort Claims Act; 14 CFR part 16, Rules of Practice for



Federally-assisted Airport Enforcement Proceedings; and 14 CFR part 17, Procedures for Protests and Contracts Disputes)

(b) administrative actions pursuant to the application of a categorical exclusion to, or development and approval of an EA, FONSI, EIS, or ROD for, any FAA action subject to NEPA review. Also, NEPA review (categorical exclusions; EA's or EIS's) is not required for the promulgation of this Order, or similar orders, issued by the Administrator or organizational elements as authorized by the Administrator, that provide supplemental instructions for agency compliance with NEPA procedures.

**201. THE THREE MAJOR LEVELS OF NEPA REVIEW.** The three major levels of NEPA review are categorical exclusions, environmental assessments (EA), and environmental impact statements (EIS).

**201a.** If an action is included in one of the categories of categorical exclusions (see paragraphs 307-312), and no extraordinary circumstances (see paragraph 304) apply to the proposed action, the FAA can take action without further environmental review. (See Appendix A for associated findings and determinations that may need to be made, and, in certain situations, in consultation with relevant oversight agencies, under special purpose statutes, regulations, and executive orders.)

**201b.** For proposed actions subject to NEPA that do not qualify for categorical exclusion, an EA or an EIS is required. The purpose of an EA is to determine whether a proposed action or its alternatives has the potential to significantly affect the environment. If the FAA has decided to prepare an EIS, it does not need to prepare an EA. If the EA on the proposed action indicates that the action will not result in significant impacts, the responsible FAA official prepares a FONSI. The FONSI documents the basis or bases for FAA's determination that the action lacks potentially significant environmental impacts. It does not represent the agency's decision to implement the proposed action. A formal decision document after a FONSI, called a Record of Decision or FONSI/ROD, is optional because the agency's decision to act may be evidenced by other documents such as rules, licenses, or approvals. If FAA decides a FONSI/ROD is needed, it should incorporate the FONSI, along with other required findings. The FONSI and other findings must be documented in the project file.

**201c.** When proposed actions incorporate mitigation measures to avoid, eliminate, or reduce anticipated harm, a FONSI may be prepared and must include appropriate mitigation measures (see paragraph 404g).

**201d.** If the EA indicates the proposed action's impacts would meet or exceed a significance threshold(s) for the affected resource(s), or that mitigation would not reduce the significant impact(s) below the applicable threshold(s), FAA must prepare an EIS. An EIS provides additional, detailed evaluations of the proposed action and its alternatives, including the No Action alternative. Where the FAA anticipates that significant effects would result, a decision can be made to prepare an EIS without first developing an EA. No sooner than 30 days after notice of the final EIS has been published by EPA in the *Federal Register*, the FAA may issue a

ROD. The ROD presents the agency's official decision on the proposed action and identifies any mitigation and monitoring measures.

**201e.** When an application or request is received that requires FAA approval or implementation, environmental analysis may be required. The responsible FAA official may require the applicant or other interested parties to provide sufficient environmental information or analysis to ensure the environmental analysis meets the requirements of this order. In such cases, the responsible FAA official will recommend deferring final action pending receipt of the necessary information or environmental studies from the applicant. Upon receipt of the additional information or environmental studies, the responsible FAA official will determine if the information is sufficient to proceed. FAA may request that the applicant prepare the EA.

## **202. INITIAL IDENTIFICATION OF ISSUES AND CONCERNS.**

**202a.** The responsible FAA official should initially review whether the proposed action:

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

(2) Would be located in wetlands, floodplains, coastal zones, prime or important farmlands, habitat of Federally listed endangered, threatened, or other protected species, wild and scenic river areas, areas protected under section 4(f) of the DOT Act, or in or adjacent to minority or low income populations; or

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

**202b.** Based on the initial environmental review, the responsible FAA official shall identify issues and problems having potentially significant environmental impacts. Further, the responsible FAA official shall determine whether such issues and problems, as they pertain to the proposed action, have been previously addressed in a broad system, program, or regional assessment (see paragraphs 409 and 513).

## **203. RESPONSIBILITIES OF THE FAA AND APPLICANTS**

**203a.** Where actions are directly undertaken by FAA, the FAA may prepare EA's and EIS's, or use contractors in accordance with paragraph 204a.

**203b.** Where the FAA must evaluate applications and has sufficient control to conditionally approve the license or project, applicants may prepare EA's, but not EIS's. If the applicant prepares an EA, then the FAA must advise and assist the applicant during its preparation. The FAA must independently evaluate and take responsibility for the assessment. This ensures that an applicant's potential conflict of interest does not impair the objectivity of the document. The FAA may ask the applicant to correct any deficiencies and re-submit the assessment if the FAA is not satisfied. Based on the final review, the FAA decides whether to prepare an EIS or issue a FONSI. Applicants may fund the preparation of EIS's through third-party contracting (see

paragraph 204 and Appendix B). In such cases, the role of the applicant is limited to providing, as appropriate, planning information, environmental studies (including studies to obtain incomplete information that the FAA finds to be required under the standards of 40 CFR 1502.22), other FAA-requested information, and financing for the EIS consultants costs.

**203c.** For projects directly undertaken by Federal agencies and requiring an EIS, the EIS shall be prepared at the feasibility analysis (go - no go) stage, and may be supplemented at a later stage. For applications to the FAA requiring an EA or EIS, preparation of the EA or EIS shall begin no later than immediately after the FAA receives the application or proposal.

## **204. USE OF CONTRACTORS.**

**204a.** Contracted consulting services may be used to prepare essential environmental documents or information. Contractors also may be used to prepare background or supplemental material and otherwise assist in preparing draft or final environmental documents for which the FAA takes responsibility. When contractors prepare EA's and EIS's for the FAA or an EA for a non-FAA party seeking FAA approval or funding, the contractor must comply with the provisions of this order.

**204b.** In some circumstances, consultant services may be needed by FAA to perform environmental assessments for direct Federal actions. Under FAA Acquisition Management System policy, procurements may not be awarded to contractors who have unacceptable actual or potential organizational conflicts of interest. Organizational conflicts of interest result when, because of activities or relationships with other persons a person is unable or potentially unable to render impartial assistance to the agency or the person's objectivity in performing the contract work is or might be impaired, or the person has an unfair competitive advantage (as used herein, the term "person" includes any legal entity including a partnership, corporation, or association). For example, a contractor selected to prepare an environmental assessment would have a potential conflict of interest if also selected to conduct final design work when the final design work is part of the construction contract. "Final design work" means a bid-ready site-specific design package containing drawings, design data handbook and construction cost estimate. The FAA may select a contractor to prepare both an EA and preliminary design work provided the design work is conceptual in nature. "Preliminary design work" means design to local criteria based on a national facility design. When an actual or potential conflict of interest is identified by either the contractor or the agency official, the agency official must consult with AGC or Regional Counsel to determine whether there is a conflict and, if so, whether the conflict can be avoided or mitigated or waived at the FAA's discretion. Such determinations are made on a case-by-case basis. FAA Acquisition Management System June 1997, Section 3.1.7.

**204c.** When an EIS is required, the lead Federal agency is required to select the contractor, who will assist the lead agency in preparing the EIS. (See 40 CFR 1506.5(c) and Appendix B, FAA Guidance on Third-Party Contracting). It is advisable to follow these procedures when preparing an EA, as the EA may result in a decision to prepare an EIS. Further, delays in preparing an EIS might be avoided by selecting the contractor in accordance with this paragraph and Appendix B.

**204d.** When a contractor prepares an EIS, the FAA requires the contractor to execute a disclosure statement prepared by the lead agency, or when appropriate, by the cooperating agency (for its portion of the EIS, as delegated by the FAA pursuant to 40 CFR 1501.6(b)(3)), specifying that the contractor has no financial or other interest in the outcome of the action (see 40 CFR 1506.5(c)).

**205. EFFECTIVE DATE.** This order is effective immediately upon signature.

**206. SPECIAL INSTRUCTIONS.** The responsible FAA official should not take any action or make any irretrievable and irreversible commitments of resources which would have an adverse environmental impact or limit the choice of reasonable alternatives until any required EIS has been completed that meets the requirements of this order (see 40 CFR 1506.1).

**206a.** Requirements that apply to EIS's may also be used for the preparation of EA's.

**206b.** Land acquisition and facility construction.

(1) The transfer of title or other interests in real property, including land, is not a major Federal action significantly impacting the environment or an irretrievable commitment of resources under NEPA, unless the acquisition of land is inextricable to the proposed project or effectively limits the choice of reasonable alternatives. The acquisition of land is inextricable to the proposed project where the acquisition is part of one continuous project leading inevitably to the proposed Federal action.

(2) If the FAA action requires acquisition of property and the action is not categorically excluded under Chapter 3 of this order, no formal contact with the property owner for the purpose of acquiring these interests, including any offer, should be made prior to filing of an EIS or issuance of a FONSI, except for:

(a) Emergency situations;

(b) Obtaining rights-of-way for such purposes as preparation for site testing, obtaining data, property surveys, etc.; and

(c) Those cases where the NEPA review process indicates that the proposed site warrants further engineering study and requires an EIS. It assures the availability of the property pending and filing the EIS. In this event, the DEIS should state that the FAA has entered into an option and the reason for the option; that alternative sites are being considered through the EIS process; and that a decision to exercise the option will not be made until completion of the review and filing of the EIS.

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

**206c.** The responsible FAA official will give particular attention to its responsibilities under section 4(f) of the DOT Act to insure that a special effort is made to preserve the natural beauty of countryside, public parks, and recreation lands, wildlife and waterfowl refuges, wild and scenic rivers or study rivers, and historic sites. FAA will not approve actions requiring the use of properties under section 4(f) of the DOT Act unless there is no feasible and prudent alternative to the use and the program includes all possible planning to minimize harm from the use.

**206d.** The responsible FAA official also will give particular attention to actions involving properties included in or eligible for inclusion in the National Register of Historic Places and the provisions of Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970.

**207. ROLE OF LEAD AND COOPERATING AGENCIES.** Section 1501.5 of the CEQ regulations describes the role of the lead agency in preparing EIS's when more than one agency is involved in a proposed action. Section 1501.6 describes the relationship of the lead agency with cooperating agencies. Sections 1501.7 and 1501.8 describe the role of the lead agency in the scoping process and in setting time limits.

**207a.** Lead agencies may ask Federal agencies with special expertise or jurisdiction by law to be cooperating agencies.

**207b.** The definition of a cooperating agency in 40 CFR 1508.5 also includes any "State or local agency of similar qualifications [i.e., with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal] or, when the effects are on a reservation, a Tribe, may by agreement with the lead agency become a cooperating agency." For further guidance, see CEQ Memorandum on Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (July 28, 1999) and the CEQ Memorandum for Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (January 30, 2002).

## **208. PUBLIC INVOLVEMENT**

**208a.** NEPA and the CEQ regulations, in describing the public involvement process, require Federal agencies to: consider environmental information in their decision making process; obtain information from the public regarding environmental concerns surrounding an agency's proposed action; fully assess and disclose potential environmental impacts resulting from the proposed action and alternatives; and provide the public with this information and allow it to comment on these findings. Public involvement is also required when FAA revises its rules, or when it proposes substantial changes to its NEPA implementing instructions. FAA's "Community Involvement Policy Statement" (dated April 17, 1995) affirms FAA's commitment to make complete, open and effective public participation an essential part of its actions, programs, and decisions.

**208b.** At the earliest appropriate stage of the action and early in the process of preparing NEPA documentation, the responsible FAA official, or when applicable, the project proponent, must provide pertinent information to the affected community and agencies and consider the affected communities' opinions (40 CFR 1501.2). The extent of early coordination will depend on the complexity, sensitivity, degree of Federal involvement, and anticipated environmental impacts of the proposed action. Comments received during early coordination on environmental impacts of proposed actions shall be considered, as appropriate, in determining whether an EA or EIS is required.

**208c.** Public input is important in defining the scope of FAA NEPA documents. Public involvement is required when the FAA prepares an EIS (40 CFR 1501.4(d)). Public involvement must be provided for, to the extent practicable, while an EA is being drafted (40 CFR 1501.4(b)). Although there is no standard approach to public scoping, it is important that FAA facilitate public participation in that process as well. Therefore, the FAA should tailor public scoping processes to match the complexity of the proposal.

**208d.** FAA must provide the public with an opportunity to review and comment on draft EIS's and must formally respond to those public comments in final EIS's (40 CFR 1506.6 and 1503.4). Although the FAA need not formally respond to public comments concerning EA's, EA's should reflect the FAA's consideration of public concerns. Further information about public involvement during the EA or EIS process is contained in chapters 4 and 5, respectively.

**208e.** NEPA also serves as "a framework" statute for completing the public notice and participation requirements specified in many other applicable environmental laws and regulations, e.g., section 106 of the National Historic Preservation Act, Executive Order 12898 and Order DOT 5610.2, addressing environmental justice. Responsible FAA officials and project proponents must involve, and are encouraged to work cooperatively with, other agencies during the NEPA process and meet the public involvement needs specified in all the environmental laws, regulations and executive orders applicable to a proposed FAA action.

**208f.** When another Federal agency disposing of land is the lead agency pursuant to NEPA, the FAA shall defer to the public involvement requirements of the agency having jurisdiction over those lands. For example, when FAA actions involve the transfer of military installations, FAA should work with DOD to satisfy DOD public involvement needs and incorporate NEPA with the requirements of the Base Closure and Realignment Acts.

**208g.** The FAA must prepare draft EIS's for rulemaking activities that could cause significant environmental impacts. As needed, the responsible FAA official should consult with the Office of Rulemaking (ARM) and the Office of the Chief Counsel (AGC) to coordinate public involvement in these instances.

## **209. PUBLIC HEARINGS, WORKSHOPS AND MEETINGS.**

**209a.** Strategic planning is needed to successfully integrate public involvement and NEPA. Failure to complete public participation can delay the process and, therefore, the proposed action. In many instances, hearings, workshops, or meetings provide timely opportunities to discover potentially controversial issues. Some factors that are helpful in deciding if a hearing, workshop, or meeting is needed include:

- (1) the proposed action's magnitude in terms of environmental impact, environmental controversy, cost and/or extent of the affected geographical area;
- (2) the degree of interest that Federal, State, Tribal, or local authorities or the public exhibit;
- (3) the complexity of issues; and

**209b.** A scoping meeting may be appropriate when the impacts of a particular action are confined to specific sites. See chapter 5, paragraph 505.

**209c.** If the FAA conducts a public hearing, meeting, or workshop for the purpose of obtaining public comment on a draft EIS or EA, the FAA should ensure that the draft EIS or EA is available for public review at least 30 days before the event occurs. Notice of a public hearing, meeting, or workshop should appear in local, general circulation newspapers. Notice of actions having national implications should be published in the *Federal Register* and mailed to national organizations having an interest in the matter. The notice should provide the:

- (1) date, time, and place, and a time period during which written comments will be accepted;
- (2) description of the proposed action;
- (3) location and availability of the NEPA document; and
- (4) name and phone number of the responsible FAA official for information purposes.

**209d.** FAA must, at the earliest stages of project planning, make every effort practicable to notify potentially affected minority populations and low-income populations of proposed actions. This may be done through the convening of public hearings, meetings, or workshops on NEPA documents. Direct contact shall be made with minority and low-income community groups, organizations and/or leaders in communities affected by the activity. Many public involvement techniques exist. As appropriate, provisions should be made to accommodate the needs of the elderly, handicapped, non-English speaking, minority and low-income populations. FAA's Community Involvement Manual" (FAA-EE-90-3, dated August 1990) and chapter 2 of DOT's "Public Involvement Techniques for Transportation Decisionmaking" provide additional guidance on hearings, meetings, and workshops. The inclusion of public comments and FAA responses to those comments in EA's and EIS's is addressed in paragraph 208. When dealing

with classified information, consult FAA Order 1600.2D, "Safeguarding Controls and Procedures for Classified National Security Information and Sensitive Unclassified Information (Aug. 29, 1997), specifically chapter 7.

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

**210a.** Executive Order 12906, Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure, April 11, 1994 (59 FR 17671, April 13, 1994), requires studies and geospatial data collected in the course of preparing an EA or EIS to conform to quality standards established through the intergovernmental coordinating mechanism provided for in the executive order, and chaired by the Federal Geographic Data Committee. For additional information, contact the Office of Environment and Energy.

**210b.** Executive Order 12866, Regulatory Planning Review, and the Presidential Memorandum on Plain Language in Government Writing, dated June 10, 1998 (63 FR 31885, June 10, 1998), requires all Federal agencies to use plain language in all proposed and final rulemaking documents published in the Federal Register and in government documents generally. FAA documents intended for public distribution must also comply with the DOT Information Quality Guidelines prepared pursuant to the OMB guidelines (P.L. 106-554) regarding the objectivity, utility, and integrity of the information disseminated. The public comment and participation process for a draft EIS satisfies the process for requesting correction of information. Any corrections deemed appropriate will be included in the Final EIS. A request for corrections to a Final EIS or for reconsideration of a request for corrections may be handled as though it were a request for a Supplemental EIS.

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

**211a.** The responsible FAA official should integrate NEPA requirements and other applicable environmental reviews and consultation requirements (40 CFR 1500.4(k)).

**211b.** The responsible FAA official should refer to Appendixes A and C of this order for an overview of analyses required under other applicable environmental laws, regulations, and executive orders.

**211c.** CEQ regulations also encourage joint preparation of NEPA documents so that each agency may adopt appropriate documents prepared by another agency (40 CFR 1506.3).

**211d.** Relevant information may be incorporated by reference (including the use of hyperlinks to documents that are stored and maintained electronically) and the FAA is



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

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

**212a.** To reduce delay, the responsible FAA official should integrate NEPA requirements, and those of associated permitting and review processes, with the agency's planning and decisionmaking process for the project as early as possible.

**212b.** The responsible FAA official should, where appropriate, use tiering for EA's and EIS's (40 CFR 1502.20):

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

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

**212c.** The responsible FAA official should refer to Appendixes A and C for an overview of requirements under other applicable environmental laws, regulations, and executive orders, identify the information and time required by the oversight agencies to complete their review and, where applicable, jointly prepare or adopt the FAA's EA or EIS to meet their own NEPA requirements (see 40 CFR 1500.5(g) and (h) and 1506.2)).

**212d.** The responsible FAA official should identify any need for additional studies or documentation.

## **213. INTERGOVERNMENTAL AND INTERAGENCY COORDINATION AND CONSULTATION.**

**213a.** The responsible FAA official, or when appropriate, the project proponent, should consult affected local units of government, Federal and State agencies, and Tribes early in the NEPA process. Comments on the environmental impacts of the proposed action shall be considered, as appropriate, in determining whether the proposed action requires an EA/FONSI or EIS and in preparing the EA/FONSI or EIS. See specific requirements for coordination and consultation, which may apply under other environmental laws, regulations, and executive orders (see Appendix A). Environmental permits and other forms of approval, concurrence, or consultation may be required from other agencies. Pertinent permit application and other review processes should be included in the planning process to ensure that the necessary supporting information is collected and provided to the permitting or reviewing agencies in a timely manner, especially if the applicable laws, regulations, or executive orders specify timeframes for these processes.

**213b.** The following executive orders also apply generally:

**(1) State and local governments.** In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, dated July 14, 1982 (as supplemented by Executive Order 13132, Federalism, dated August 4, 1999 (64 FR 43255, August 10, 1999)), and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities, the responsible FAA official shall provide the opportunity for State and local officials to review and comment on Federal actions for Federal assistance or actions affecting them. A few States have established a point of contact, often within the governor's office, to coordinate comments by State agencies. Otherwise, the responsible FAA official should contact appropriate State agencies directly. See also specific requirements for consultation with State and local governments in Appendix A, Analysis of Environmental Impact Categories.

**(2) Tribes.** In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000 (65 FR 67249, November 9, 2000), the Federal Government continues to work with Tribes on a government-to-government basis to address issues concerning Tribal self government, trust resources, and Tribal treaty and other rights. For regulations, legislative comments, or proposed legislation, and other policy statements or actions that have substantial direct effects on Federally Recognized Tribes, the appropriate FAA official should initiate consultation with the recognized leader of the Tribe and seek advice on how to proceed based on the Tribal culture and the Tribal organization as discussed in FAA Order 1210.20, "American Indian and Alaska Native Tribal Consultation Policy and Procedures" (January 28, 2004). (See also specific requirements for consultation with Tribes in Appendix A.) Sources of information for addresses to contact Tribes include, for example, State Historic Preservation Offices, the Bureau of Indian Affairs, FAA's Federal Historic Preservation Officer, and FAA's National or Regional Tribal Consultation Officials..

**(3) Foreign governments.** In accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979 (44 FR 1957, January 9, 1979), specific treaties, and DOT Order 5610.1C, paragraph 16, the responsible FAA official should consult with the appropriate headquarters line of business office. The line of business will notify AEE and then consult with the Assistant Secretary for Transportation Policy (P-1), to initiate consultation with foreign governments for proposed actions outside the United States, its territories, and possessions that have the potential to significantly affect the global commons or the environment of other nations.

**213c.** The responsible FAA official should refer to relevant interagency memoranda of agreement and understanding. (See also Appendix A, Analysis of Environmental Impact Categories; Appendix C, Related Executive Orders, DOT & FAA Orders, and Memoranda/Guidance; and contact the Environment, Energy and Employee Safety Division (AEE-200) or the Office of Chief Counsel (AGC-600) for information on the status of this and other interagency memoranda).

**213d.** Various laws, regulations, executive orders, and departmental orders establish interagency coordinating mechanisms, e.g., related to invasive species, coral reefs, and children's environmental health risks. The responsible FAA official should review Appendix A,

Analysis of Environmental Impact Categories, and contact the Environment, Energy and Employee Safety Division (AEE-200) or the Office of Chief Counsel (AGC-600) for more specific information.

**213e.** In accordance with 40 CFR 1503.1 and 1503.2, the FAA must be invited to comment, and the FAA must comment, on draft EIS's prepared by other Federal agencies if the FAA has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards (e.g., 14 CFR part 36). The responsible FAA official may, if appropriate, reply that the FAA has no comment. Further, if the FAA is acting as a cooperating agency, the responsible FAA official shall, if satisfied that FAA's views are adequately reflected in the environmental document, reply that the FAA has no comment. If the responsible FAA official or the Office of Environment and Energy prepares comments that request additional information, the request should be as timely and specific as possible, indicating what additional information the FAA needs to fulfill other applicable environmental reviews or consultation requirements. If the responsible FAA official or the Office of Environment and Energy objects or expresses a reservation about the proposed action based on potential environmental impacts, the FAA reply must specify what mitigation measures it considers necessary to allow the program office to grant or approve applicable permit, license, or related requirements or concurrences.

**214. ROLES AND RESPONSIBILITIES.** The Associate and Assistant Administrators of the various FAA organizations shall define the roles and responsibilities of their respective offices, services, regions, and centers for complying with this order. Responsibilities may be delegated in accordance with appropriate FAA orders, such as Order 1100.154A, Delegations of Authority.

**214a.** The Assistant Administrator for Region and Center Operations (ARC) is responsible for overseeing Regional Administrators and the Director of the Mike Monroney Aeronautical Center. They are responsible for coordinating cross-divisional and cross-regional environmental matters and for overseeing those regional environmental activities not otherwise straight-lined to headquarters. Additionally, the Director of the Mike Monroney Aeronautical Center is responsible for overseeing center environmental activities, including NEPA compliance.

**214b.** The Associate Administrator for Airports (ARP) is responsible for considering the environmental impacts of proposed FAA approvals of FAA-funded airport actions, airport layout plans (even if the proposal does not require FAA funding), and assuring compliance with NEPA requirements and other Federal and Departmental environmental laws, regulations, and orders. Airports personnel shall comply with the NEPA requirements in this order, supplemented by the most current version of FAA Order 5050.4A (or subsequent revisions to it). ARP's Office of Airport Planning and Programming, Community and Environmental Needs Division, APP-600, provides guidance to Regional and District Airports personnel concerning Federal, Departmental, and agency environmental policy regarding airport development actions.

**214c.** The Assistant Administrator for Aviation Policy, Planning, and Environment (AEP) is responsible for providing policy guidance to the agency on implementing a wide range of environmental laws and regulations. The Office of Environment and Energy (AEE) provides policy oversight on FAA environmental actions; issues regulations for aircraft noise and

emissions under 14 CFR parts 34 and 36; provides assistance as necessary in developing guidelines and procedures for FAA program areas; serves as the designated FAA NEPA liaison in accordance with 40 CFR 1507.2 “to be responsible for overall review of agency NEPA compliance” and Federal Preservation Officer in accordance with section 110 of the National Historic Preservation Act; interprets policies established in this order; provides assistance with computerized environmental tools, such as the “Integrated Noise Modeling” (INM) for aircraft noise and the “Emissions Dispersion Modeling System” (EDMS) for air quality; and provides advice to and supplements NEPA training programs in cooperation with the Office of Learning and Development and other applicable organizational elements.

**214d.** The Office of the Chief Counsel (AGC) is responsible for providing legal advice on NEPA compliance and legal requirements. AGC reviews actions subject to section 4(f) of the DOT; counsels and assists headquarters staff and regional offices in accomplishing FAA environmental review, and advises on the legal sufficiency of environmental documents. Regional Counsel and Center Counsel are responsible for providing legal counsel, assistance, and review in the conduct of regional actions and environmental activities and in advising on the legal sufficiency of regional and center environmental documents.

**214e.** The Air Traffic Organization is responsible for evaluating the environmental impacts for all actions arising out of Air Traffic Organization responsibilities that require compliance with NEPA and all other Federal and Departmental environmental laws, regulations and orders. Air Traffic Organization personnel shall comply with the NEPA requirements of this order.

**214f.** The Associate Administrator for Commercial Space Transportation (AST) is responsible for assessing the environmental impacts of commercial launch activities. The FAA is authorized to regulate and license U.S. commercial launch and re-entry activities and as such, AST is responsible for ensuring that launch services provided by private enterprises are consistent with national security and foreign policy interests of the United States and do not jeopardize public safety and the safety of property. AST's authority extends to licensing of commercial launch vehicles (LV's) and is considered to be a major Federal action subject to NEPA requirements. Launch and re-entry licenses also identify the requirement for the proper oversight and control of launch activities. AST issues launch and re-entry specific and launch and re-entry site operators licenses.

**214g.** The Associate Administrator for Regulation and Certification (AVR) is responsible for considering the environmental impacts for all actions arising out of AVR initiatives that require NEPA compliance and other Federal and Departmental environmental laws, regulations, and orders. AVR personnel shall comply with requirements as delegated to the Flight Standards Service, Aircraft Certification Service, Regional Flight Standards Service Division Managers, and Aircraft Certification Directorate Managers.

**214h.** The Assistant Administrator for International Aviation (API) is responsible for considering the environmental impacts for all actions arising out of API initiatives that require NEPA compliance and other Federal and Departmental environmental laws, regulations, and orders. API personnel shall comply with requirements as delegated to the Office of International Aviation.

**214i.** The Assistant Administrator for Financial Services (ABA) is responsible for assuring that adequate funding is requested for NEPA activities in the budget outyears. ABA assures that services, regions, centers, and offices factor in NEPA activities in their budget submittals in the annual call for estimates. The Office of Budget (ABU) also uses this order as the basis for supporting the annual call for estimates related to additional costs required for environmental activities.

**214j.** The Assistant Administrator for Human Resource Management (AHR) is responsible for incorporating training requirements in the individual development plans for appropriate personnel. Within AHR, the Office of Learning and Development (AHT) assures that FAA training is updated to include instruction on NEPA for appropriate personnel, in cooperation with the Center for Management Development (AHM), the FAA Academy (AMA), at the Mike Monroney Aeronautical Center (AMC), the Office of Environment and Energy (AEE) within the Associate Administrator for Policy, Planning, and Environment (AEP), and the Environmental Law Branch of the Office of Chief Counsel (AGC), and training staff within the program offices.

**214k.** The Office of Civil Rights (ACR) is responsible for determining whether projects receiving Federal financial assistance from the FAA comply with the appropriate civil rights laws and regulations, and executive orders, including those requirements under the E.O. 12898 and the accompanying Presidential Memorandum concerning environmental justice and Order DOT 5610 on environmental justice in the context of Title VI of the Civil Rights Act of 1964, as amended.

**214l.** The Assistant Administrator for Security and Hazardous Materials (ASH) is responsible for considering the environmental impacts for all actions arising out of ASH initiatives that require NEPA compliance and other Federal and Departmental environmental laws, regulations, and orders.

**215. ENVIRONMENTAL STEWARDSHIP AND STREAMLINING.** Certain airport capacity projects, aviation safety projects, and aviation security projects may be subject to special designation and treatment in accordance with provisions of “Vision 100 -- Century of Aviation Reauthorization Act” as described in Appendix D of this order. Airport infrastructure projects may also be selected for review under Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews. It is the responsibility of the FAA office that has the primary responsibility for a proposed action and that is leading the environmental review to assure that applicable special review provisions are effectively applied.

**216.-299. RESERVED.**

## **CHAPTER 3. ADVISORY AND EMERGENCY ACTIONS AND CATEGORICAL EXCLUSIONS**

**300. INTRODUCTION.** This chapter explains how to address advisory actions and emergency actions. It also provides guidance on FAA actions that are categorically excluded, and as a result, do not require an EA or EIS.

**301. ADVISORY ACTIONS.** Some Federal actions are of an advisory nature. Actions of this type are not considered major Federal actions under NEPA, and categorical exclusions, EA's or EIS's are not required as a condition for taking the action. If it is known or anticipated that some subsequent Federal action would be subject to NEPA, the FAA shall so indicate in the advisory action. Examples of advisory actions include:

**301a.** Determinations under 14 CFR part 77, Objects Affecting Navigable Airspace; and

**301b.** Determinations under 14 CFR part 157, Notice of Construction, Alteration, Activation, and Deactivation of Airports, and Marking and Lighting Recommendations. Determinations under 14 CFR part 157 apply to airports, helipads, and heliports.

**301c.** Designation of alert areas and warning areas under FAA Order 7400.2, Procedures for Handling Airspace Matters.

**302. EMERGENCY ACTIONS THAT REQUIRE AN ENVIRONMENTAL IMPACT STATEMENT.** Section 1506.11 of Title 40 of the CFR allows CEQ to grant alternative arrangements for, but not eliminate, NEPA compliance where a national emergency, disaster, or similar great urgency makes it necessary to take actions that merit an environmental impact statement without observing other provisions of CEQ regulations. The processing times may be reduced or, if the emergency situation warrants, preparation and processing of environmental impact statements may be abbreviated. A request for alternative arrangements must be made by, or on the behalf of, the Administrator of the FAA. The responsible FAA official should consult with AEE (Environment, Energy and Employee Safety Division, AEE-200) and AGC (AGC-600) for evaluation to assure national consistency. The responsible FAA official shall then consult CEQ about alternative arrangements for complying with NEPA.

### **303. CATEGORICAL EXCLUSIONS: GENERAL.**

**303a.** Categorical exclusions are those types of Federal actions that meet the criteria contained in 40 CFR 1508.4. They represent actions that the FAA has found, based on past experience with similar actions, do not normally require an EA or EIS because they do not individually or cumulatively have a significant effect on the human environment, with the exception of extraordinary circumstances as set forth in paragraph 304. Categorical exclusions are identified by functional group and are presented in paragraphs 307 through 312. All offices should examine the categorical exclusions provided to determine whether an action is categorically excluded. For reference, the office(s) that would most commonly use a categorical exclusion are provided in parentheses following the type of action. However, any office may use

a given categorical exclusion if it is applicable to their particular action. Where qualifications identifying an extraordinary circumstance are included in a given categorical exclusion, they are intended for emphasis only, and are not intended to imply that such qualifications should not be considered for other categorical exclusions, where applicable.

**303b.** The categorical exclusion list is classified by the following functions:

- (1) Administrative/General: Actions that are administrative or general in nature.
- (2) Certification: Actions concerning issuance of certificates or compliance with certification programs.
- (3) Equipment and Instrumentation: Actions involving installation, repair, or upgrade of equipment or instruments necessary for operations and safety.
- (4) Facility Siting, Construction, and Maintenance: Actions involving acquisition, repair, replacement, maintenance, or upgrading of grounds, infrastructure, buildings, structures, or facilities that generally are minor in nature.
- (5) Procedural: Actions involving establishment, modification, or application of airspace and air traffic procedures.
- (6) Regulatory: Actions involving compliance with, or exemptions to, regulatory programs or requirements.

**303c.** The responsible FAA official must first determine whether a proposed action is within one of the categorical exclusions listed in paragraphs 307 through 312. If it is not, an EA or EIS must be prepared. An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before finalizing a determination that a proposed action qualifies for categorical exclusion. If it is uncertain whether an extraordinary circumstance applies to the proposed action, the responsible FAA official shall consult with appropriate offices for guidance. Figure 3-1, Categorical Exclusion Process, summarizes the categorical exclusion process. The following paragraphs provide more information on the categorical exclusion process.

**303d.** Some of the categorical exclusions listed in paragraphs 307-312 are actions for which there is no reasonable expectation of a change in use and thus should not cause environmental impacts. Such actions are identified by reference to this paragraph.

**Figure 3-1. Categorical Exclusion Determination Process**

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

**304. EXTRAORDINARY CIRCUMSTANCES.** Some actions that would normally be categorically excluded could require additional environmental analysis to determine the appropriate NEPA documentation. A determination of whether a proposed action that is normally categorically excluded requires an EA or EIS depends on whether the proposed action involves extraordinary circumstances. Extraordinary circumstances exist when the proposed action (1) involves any of the following circumstances, and (2) may have a significant effect (40 CFR 1508.4). The presence of one or more of the following circumstance(s) in connection with a proposed action is not necessarily a reason to prepare an EA or EIS. The determination of whether a proposed action may have a significant environmental effect is made by considering any requirements applicable to the specific resource (see Appendix A). The circumstances are as follows:

**304a.** An adverse effect on cultural resources protected under the National Historic Preservation Act of 1966, as amended.

**304b.** An impact on properties protected under section 4(f) of the Department of Transportation Act.

**304c.** An impact on natural, ecological (e.g., invasive species), or scenic resources of Federal, Tribal, State, or local significance (for example: Federally listed or proposed endangered, threatened, or candidate species or designated or proposed critical habitat under the Endangered Species Act), resources protected by the Fish and Wildlife Coordination Act; wetlands; floodplains; coastal zones; prime, unique, State or locally important farmlands; energy supply and natural resources; and wild and scenic rivers, including study or eligible river segments and solid waste management.

**304d.** Cause a division or disruption of an established community, or a disruption of orderly, planned development, or an inconsistency with plans or goals that have been adopted by the community in which the project is located.

**304e.** Cause an increase in congestion from surface transportation (by causing decrease in Level of Service below acceptable level determined by appropriate transportation agency, such as a highway agency).



**304f.** An impact on noise levels of noise-sensitive areas.

**304g.** An impact on air quality or violate local, State, Tribal, or Federal air quality standards under the Clean Air Act Amendments of 1990.

**304h.** An impact on water quality, sole source aquifers, a public water supply system, or State or Tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

**304i.** Effects on the quality of the human environment that are likely to be highly controversial on environmental grounds. The term "controversial" means a substantial dispute exists as to the size, nature, or effect of a proposed Federal action. The effects of an action are considered highly controversial when reasonable disagreement exists over the project's risks of causing environmental harm. Opposition on environmental grounds by a Federal, State, or local government agency or by a Tribe or by a substantial number of the persons affected by the action should be considered in determining whether or not reasonable disagreement regarding the effects of a proposed action exists. If in doubt about whether a proposed action is highly controversial, consult the program office's headquarters environmental division, AEE (Environment and Energy Team, AEE-200), regional counsel, or AGC (AGC-600) for assistance.

**304j.** Likelihood to be inconsistent with any Federal, State, Tribal, or local law relating to the environmental aspects of the proposed action.

**304k.** Likely to directly, indirectly, or cumulatively create a significant impact on the human environment, including, but not limited to, actions likely to cause a significant lighting impact on residential areas or commercial use of business properties, likely to cause a significant impact on the visual nature of surrounding land uses (see sections 11 and 12, Appendix A for additional information), likely to be contaminated with hazardous materials based on Phase I or Phase II Environmental Due Diligence Audit (EDDA's), or likely to cause such contamination (see section 10, Appendix A for additional references and discussion).

**305. OPTIONAL CATEGORICAL EXCLUSION DOCUMENTATION.** Categorical exclusions are allowed under CEQ regulations to reduce delay and paperwork. Once categorical exclusions are promulgated, with notice and public procedure, by the FAA, CEQ guidance allows FAA not to repeatedly document that an activity is within a listed categorical exclusion and no extraordinary circumstances exist. The decision that a proposed action is within a categorical exclusion and that no extraordinary circumstances exist shall not be considered deficient if it is not supported by documentation verifying that the proposed action is categorically excluded (see, however, paragraph 306 and Appendix A for information about specific findings or determinations and associated public notice and comment requirements under other applicable environmental laws, regulations, and executive orders.). Unique situations may occur where the responsible FAA official may decide, for record-keeping purposes or in anticipation of litigation, to informally document the agency's categorical

exclusion determination. Examples of such unique situations may include: (1) when there is controversy or public opposition (but not "effects on the quality of the human environment likely to be highly controversial on environmental grounds" as defined in paragraph 304i); (2) when the applicability of a categorical exclusion is not intuitively clear; (3) when litigation is anticipated; or (4) when the project is perceived by the public as having the potential for adverse environmental effects. There is no prescribed format for any documentation that the responsible FAA official decides to include in the record to support a categorical exclusion. The responsible FAA official should use reasonable judgment on the appropriate type and amount of information.

**306. OTHER ENVIRONMENTAL LAWS AND REQUIREMENTS.** Paragraph 304 identifies categories of environmental impacts that are subject to laws, regulations, or executive orders in addition to NEPA and which must be complied with before a Federal action is approved. The responsible FAA official must assure, to the fullest extent possible, that compliance with all applicable environmental requirements is done in addition to making the appropriate determination to apply a categorical exclusion. Compliance with these laws, regulations or executive orders, including any required consultations, findings or determinations, should be documented. Additional information on other environmental laws, regulations, and executive orders is provided in Appendixes A and C.

**307. CATEGORICAL EXCLUSIONS FOR ADMINISTRATIVE/GENERAL ACTIONS.** This paragraph provides the list of categorical exclusions for FAA actions that are administrative or general in nature. *An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before deciding to categorically exclude a proposed action.* Those categorical exclusions that refer to those actions for which there is no reasonable expectation of a change in use and thus should not cause environmental impacts are identified by reference to paragraph 303d. The categorical exclusions for administrative and general actions are:

**307a.** Implementation of measures to respond to emergency air or ground safety needs, accidents, or natural events with no reasonably foreseeable significant long-term adverse effects (All)

**307b.** Release of an airport sponsor from Federal obligations incurred when the sponsor accepted: (1) an Airport Improvement Grant; or (2) Federal surplus property for airport purposes. FAA consent to long term leases (i.e., those exceeding 20 years) converting airport-dedicated property to non-aeronautical, revenue-producing purposes (e.g., convenience concessions such as food or personal services) has the same effect as a release and is part of this categorical exclusion provided that the proposed any reasonably foreseeable uses of the property do not trigger extraordinary circumstances as described in paragraph 304. (APP)

**307c.** A FAA action responding to a request for conveying Federally-owned land, including surplus Federal property and/or joint-use facilities, provided the proposed use of the conveyed land is either unchanged or for a use that is categorically excluded. (APP, ATO)

**307d.** Federal funding and approval of amendments to airport layout plans (ALP) to depict projects to carry out FAA-approved noise compatibility programs (NCP) pursuant to 14 CFR part 150. (APP)

**307e.** Issuance of Notices to Airmen (NOTAMS), which notify pilots and other interested parties of interim or temporary conditions. (AFS, AVN, ATO)

**307f.** Mandatory actions required under implementing regulation for any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations or authorities in which the United States is a member or participant except when the United States has discretion over implementation of such requirements. (AGC, AIA, API, APP, AEE, ATO, AST, AFS)

**307g.** Issuance of airport policy and planning documents including the National Plan of Integrated Airport Systems (NPIAS), Airport Improvement Program (AIP) priority system, and advisory circulars on planning, design, and development which are issued as administrative and technical guidance. (APP) (see paragraph 303d)

**307h.** Approval of an airport sponsor's request solely to impose Passenger Facility Charges (PFC) or approval to impose and use Passenger Facility Charges for planning studies. (ARP) (see paragraph 303d)

**307i.** Actions that are tentative, conditional, and clearly taken as a preliminary action to establish eligibility under an FAA program, including, for example, Airport Improvement Program (AIP) actions that are tentative and conditional and clearly taken as a preliminary action to establish an airport sponsor's eligibility under the AIP. (All) (see paragraph 303d)

**307j.** Administrative and agency operating actions, such as procurement documentation, organizational changes, personnel actions, and legislative proposals not originating in the FAA. (All) (see paragraph 303d)

**307k.** Agreements with foreign governments, foreign civil aviation authorities, international organizations, or U.S. Government departments calling for cooperative activities or the provision of technical assistance, advice, equipment, or services to those parties, and the implementation of such agreements; negotiations and agreements to establish and define bilateral aviation safety relationships with foreign governments, and the implementation of such agreements; attendance at international conferences and the meetings of international organizations, including participation in votes and other similar actions. (All) (see paragraph 303d)

**307l.** All delegations of authority to designated examiners, designated engineering representatives (DER), or airmen under section 314 of the FAA Act (49 U.S.C. 44702(d) and 45303). (AFS, AIR) (see paragraph 303d)

**307m.** FAA administrative actions associated with transfer of ownership or operation of an existing airport, by acquisition or long-term lease, as long as the transfer is limited to ownership, right of possession, and/or operating responsibility. (APP) (see paragraph 303d)

**307n.** Issuance of grants to prepare noise exposure maps and noise compatibility programs (NCP) under 49 U.S.C. 47503(2) and 47504 and, under 14 CFR part 150, FAA determinations to accept noise exposure maps and approve noise compatibility programs. (APP) (see paragraph 303d)

**307o.** Issuance of planning grants which do not imply a project commitment, such as airport planning grants and grants to states participating in the state block grant program. (APP) (see paragraph 303d)

**307p.** Conditional approval of an Airport Layout Plan (ALP). (APP) (see paragraph 303d)

**307q.** Planning and development of training, personnel efficiency, and performance projects and programs. (All) (see paragraph 303d)

**307r.** Issuance of policy and planning documents and legislative proposals not intended for, or which do not cause direct implementation of, project or system actions. (All) (see paragraph 303d)

**307s.** Project amendments (for example, increases in costs) that do not alter the environmental impact of the action. (All) (see paragraph 303d)

**307t.** Actions related to the retirement of the principal of bond or other indebtedness for terminal development. (APP) (see paragraph 303d)

**307u.** Approval under 14 CFR part 161 of a restriction on the operations of Stage 3 aircraft that does not have the potential to significantly increase noise at the airport submitting the restriction proposal or at other airports to which restricted aircraft may divert. (APP)

**308. CATEGORICAL EXCLUSIONS FOR CERTIFICATION ACTIONS:** This paragraph provides the list of categorical exclusions for FAA actions concerning issuance of certificates or compliance with certification programs. *An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before deciding to categorically exclude a proposed action.* Those categorical exclusions that refer to those actions for which there is no reasonable expectation of a change in use and thus should not cause environmental impacts are identified by reference to paragraph 303d. The categorical exclusions for certification actions are:

**308a.** Approvals and findings pursuant to 14 CFR part 36, Noise Certification: Aircraft and Airworthiness Certification and acoustical change provisions under 14 CFR 21.93. (AFS, AIR)

**308b.** Approvals of aircraft, launch vehicles, and engine repairs, parts, and alterations not affecting noise, emissions, or wastes. (All)

**308c.** Issuance of certificates such as: (1) new, amended, or supplemental aircraft types that meet environmental regulations; (2) new, amended, or supplemental engine types that meet emission regulations; (3) new, amended, or supplemental engine types that have been excluded by the EPA (14 CFR 34.7); (4) medical, airmen, export, manned free balloon type, glider type, propeller type, supplemental type certificates not affecting noise, emission, or waste; and (5) mechanic schools, agricultural aircraft operations, repair stations, and other air agency ratings. (AFS, AIR)

**308d.** Operating specifications and amendments that do not significantly change the operating environment of the airport. "That do not significantly change the operating environment of the airport" refers to minor operational changes at an airport that do not significantly increase noise, air quality, or other environmental impacts. These would include, but are not limited to, authorizing use of an alternate airport, administrative revisions to operations specifications, or use of an airport on a one-time basis. The use of an airport on a one-time basis means the operator will not have scheduled operations at the airport, or will not use the aircraft for which the operator requests an amended operations specification, on a scheduled basis. (AFS)

**308e.** Issuance of certificates and related actions under the Airport Certification Program (14 CFR part 139). (APP) (see paragraph 303d)

**308f.** Issuance of Airworthiness Directives (AD's) to ensure aircraft safety. (AFS, AIR) (see paragraph 303d)

**309. CATEGORICAL EXCLUSIONS FOR EQUIPMENT AND INSTRUMENTATION:**

This paragraph provides the list of categorical exclusions for FAA actions involving installation, repair, or upgrade of equipment or instruments necessary for operations and safety. *An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before deciding to categorically exclude a proposed action.* The categorical exclusions for equipment and instrumentation actions are:

**309a.** Construction of Remote Communications Outlet (RCO), Remote Transmitter/Receiver (RTR), or Remote Center-Air Ground Communication Facility (RCAG), or essentially similar facilities or equipment identified in, and designed and constructed in accordance with, FAA Order 6580.3, "Remote Communications Facilities Installation Standards Handbook" on designated airport property or launch facility, or co-located with other FAA facilities, or co-located at a location currently used for similar facilities or equipment, or replacement with essentially similar facilities or equipment. These facilities are typically located within a 150 ft X 150 ft parcel, with antenna towers reaching approximately 40 ft in height. (ATO)

**309b.** Establishment, installation, upgrade, or relocation on designated airport or FAA property: airfield or approach lighting systems, visual approach aids, beacons, and electrical distribution systems as described in FAA Order 6850.2, “Visual Guidance Lighting Systems” and other related facilities. (ATO, APP)

**309c.** Federal financial assistance for, or ALP approval of, or FAA installation or upgrade of facilities and equipment, other than radars, on designated airport or FAA property or launch facility. Facilities and equipment means FAA communications, navigation, surveillance and weather systems. Weather systems include hygrothermometers, Automated Weather Observing System (AWOS), Automatic Surface Observation System (ASOS), Stand Alone Weather Sensors (SAWS), Runway Visual Range (RVR), other essentially similar facilities and equipment that provides for modernization or enhancement of the service provided by these facilities. Navigational aids include Very High Frequency Omnidirectional Range (VOR), VOR Test facility (VOT), co-located VOR's and Tactical Aircraft Control and Navigation (TACAN) (VORTAC), Low Power TACAN, Instrument Landing System (ILS) equipment or components of ILS equipment (establishment or relocation of an ILS is not included; an EA is normally required; see paragraph 401i), Wide Area Augmentation System (WAAS), Local Area Augmentation System (LAAS), other essentially similar facilities and equipment, and equipment that provides for modernization or enhancement of the service provided by that facility, such as conversion of VOR to VORTAC or conversion to Doppler VOR (DVOR), or conversion of ILS to category II or III standards. FAA Order 6820.10 "VOR, VOR/DME, and TACAN Siting Criteria" governs the installation of VOR/VOT/VORTAC-type equipment. These facilities are typically located within a 150 ft X 150 ft parcel, with a total structure height reaching approximately 50-ft in height. (ATO, APP, AST)

**309d.** Federal financial assistance for, or ALP approval of, or FAA installation, repair, replacement, relocation, or upgrade of radar facilities and equipment, on designated airport or FAA property or launch facility, that conform to the current American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) guidelines for maximum permissible exposure to electromagnetic fields. Radar facilities and equipment include Terminal Doppler Weather Radar (TDWR), Next Generation Weather Radar (NEXRAD), Precision Runway Monitor (PRM), Airport Surface Detection Equipment (ASDE), Air Route Surveillance Radar (ARSR), Airport Surveillance Radar (ASR), Air Traffic Control Beacon Interrogator (ATCBI), and other essentially similar facilities and equipment. In addition, this includes equipment that provides for modernization or enhancement of the service provided by these facilities, such as Radar Bright Display Equipment (RBDE) with Plan View Displays (PVD), Direct Access Radar Channel (DARC), adding a beacon system onto an existing radar, and calibration equipment. (ATO, APP,)

**309e.** Federal financial assistance for, Airport Layout Plan (ALP) approval of, or FAA installation, repair, relocation, replacement, removal, or upgrade of minor miscellaneous items such as Low Level Wind Shear Alert System (LLWAS), wind indicators, wind measuring devices, landing directional equipment, segmented circles (visual indicators providing traffic pattern information at airports without airport traffic control towers), mobile Airport Traffic

Control Towers (ATCT), Mobile Emergency Radar Facilities (MERF), and associated fencing and calibration equipment. (APP, ATO)

**309f.** Installation or replacement of engine generators used in emergencies. (ATO, AST,)

**309g.** Replacement or upgrade of power and control cables for existing facilities and equipment, such as airfield or approach lighting systems (ALS), launch facility lighting systems, visual approach aids, beacons, and electrical distribution systems as described in FAA Order 6850.2, "Visual Guidance Lighting Systems," airport surveillance radar (ASR), launch facility surveillance radar, Instrument Landing System (ILS), and Runway Visual Range (RVR). (ATO)

**309h.** Acquisition of security equipment required by rule or regulation for the safety or security of personnel and property on the airport or launch facility (14 CFR part 107, Airport Security), safety equipment required by rule or regulation for certification of an airport (14 CFR part 139, Certification and Operation: Land Airports Serving Certain Air Carriers) or licensing of a launch facility, or snow removal equipment. (APP, AST)

**310. CATEGORICAL EXCLUSIONS FOR FACILITY SITING, CONSTRUCTION AND MAINTENANCE.** This paragraph provides the list of categorical exclusions for FAA actions involving acquisition, repair, replacement, maintenance, or upgrading of grounds, infrastructure, buildings, structures, or facilities that generally are minor in nature. *An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before finalizing a decision to categorically exclude a proposed action.* The categorical exclusions for facility siting and maintenance actions are:

**310a.** Access road construction and construction, relocation or repair of entrance and service roadways that do not reduce the Level of Service on local traffic systems below acceptable levels. (ATO, APP, AST)

**310b.** Acquisition of land and relocation associated with a categorically excluded action. (ATO, APP)

**310c.** Installation, modification or repair of radars at existing facilities that conform to the current American National Standards Institute/Institute of Electrical and Electronics Engineers (ANSI/IEEE) guidelines for maximum permissible exposures to electromagnetic fields and do not significantly change the impact on the environment of the facility. (All)

**310d.** Federal financial assistance, Airport Layout Plan (ALP) approval, or FAA installation of de-icing/anti-icing facilities that comply with National Pollutant Discharge Elimination System (NPDES) permits or other permits protecting the quality of receiving waters, and for which related water detention or retention facilities are designed not to attract wildlife hazardous to aviation, as defined in FAA Advisory Circular 150-5200-33. (ATO, APP)

**310e.** Federal financial assistance, licensing, or Airport Layout Plan (ALP) approval for construction or repair of a runway that is existing or taxiway, apron, loading ramp, or safety runway area including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, provided the action will not create environmental impacts outside of an airport or launch facility property. (APP, AST)

**310f.** Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA construction or limited expansion of accessory on-site structures, including storage buildings, garages, small parking areas, signs, fences, and other essentially similar minor development items. (ATO, APP, AST)

**310g.** Construction of Remote Transmitter/Receiver (RT/R), or other essentially similar facilities and equipment, to supplement existing communications channels installed in the Airport Traffic Control Tower (ATCT) or Flight Service Station (FSS). (ATO)

**310h.** Federal financial assistance, licensing, or ALP approval for construction or expansion of facilities, such as terminal passenger handling and parking facilities or cargo buildings, at existing airports and launch facilities that do not substantially expand those facilities. (All)

**310i.** Demolition and removal of FAA buildings and structures, except those of historic, archaeological, or architectural significance as officially designated by Federal, State, or local government; and alteration of an existing FAA facility that does not alter or change environmental impacts of the existing facility or structure, provided no hazardous substances contamination is present on the site or contaminated equipment is present on the site. (ATO, AST)

**310j.** Removal or extension of water, sewage, electrical, gas, or other utilities of temporary duration to serve construction. (ATO, AST)

**310k.** Filling of earth into previously excavated land with material compatible with the natural features of the site, provided the land is not delineated as a wetland; or minor dredging or filling of wetlands or navigable waters for any categorically excluded action, provided the fill is of material compatible with the natural features of the site, and the dredging and filling qualifies for an U.S. Army Corps of Engineers nationwide or a regional general permit. (ATO, AST, APP)

**310l.** Federal financial assistance for, licensing of, or approval of the grading of land, the removal of obstructions to air navigation, or erosion control measures, provided those activities occur on and only affect airport property, a launch facility, or FAA-owned or leased property (ATO, APP, AST,)

**310m.** Lease of space in buildings or towers. (ATO)

**310n.** Minor expansion of facilities, including the addition of equipment, such as telecommunications equipment, on an existing facility where no additional land is required, or



when expansion is due to remodeling of space in current quarters or existing buildings. Additions may include antennas, concrete pad and minor trenching for cable. (ATO, AST)

**310o.** Minor trenching and backfilling where the surface is restored and the excavated material is protected against erosion and runoffs during the construction period. (ATO, APP, AST,)

**310p.** New gardening or landscaping, and maintenance of existing landscaping that do not cause or promote the introduction or spread of invasive species that would harm the native ecosystem; use landscape practices that reflect the recommendations in the Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837); and do not attract wildlife that is hazardous to aviation. (ATO, APP, AST)

**310q.** Construction and installation, on airports or launch facilities, of noise abatement measures, such as noise barriers to diminish aircraft and launch vehicle engine exhaust blast or noise, and installation of noise control materials. (All)

**310r.** Purchase, lease, or acquisition of three acres or less of land with associated easements and rights-of-way for new facilities. (ATO)

**310s.** Repairs and resurfacing of existing access to remote facilities and equipment, such as Air Route Surveillance Radar (ARSR), Remote Center Air/Ground Communications Facility (RCAG), Remote Communications Outlet (RCO), and VHF Omnidirectional Range (VOR) with Ultra-High Frequency Tactical Air Navigation Aid (VORTAC). (ATO)

**310t.** Federal financial assistance for, or Airport Layout Plan (ALP) approval of, a new heliport on an existing airport or launch facility that would not significantly increase noise over noise sensitive areas. (APP, AST)

**310u.** Repair or replacement of underground storage tanks (UST's) and aboveground storage tanks (AST's), or replacement of UST's with AST's at the same location. Closure, removal, or remediation of a fuel storage tank at a FAA facility in accordance with FAA Order 1050.15A, Fuel Storage Tanks at FAA Facilities and EPA regulations 40 CFR parts 280, 281, and 112. (ATO)

**310v.** Replacement or reconstruction of a terminal, structure, or facility with a new one of similar size and purpose, where location will be on the same site as the existing building or facility. (ATO, APP, AST)

**310w.** Repair and maintenance of existing roads, rights-of-way, trails, grounds, parking areas, and utilities, including, for example, snow removal, vegetation control, and erosion control work. (All)

**310x.** Routine facility decommissioning, exclusive of disposal. (ATO, AST)

**310y.** Take over of non-Federal facilities by the FAA. (ATO)

**310z.** Federal financial assistance, licensing, Airport Layout Plan (ALP) approval, or FAA action related to topping or trimming trees to meet 14 CFR part 77 (Objects Affecting Navigable Airspace) standards for removing obstructions which can adversely affect navigable airspace. (All)

**310aa.** Upgrading of building electrical systems or maintenance of existing facilities, such as painting, replacement of siding, roof rehabilitation, resurfacing, or reconstruction of paved areas, and replacement of underground facilities. (ATO, AST)

**311. CATEGORICAL EXCLUSIONS FOR PROCEDURAL ACTIONS.** This paragraph provides the list of categorical exclusions for FAA actions involving establishment, modification, or application of airspace and air traffic procedures. *An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before finalizing a decision to categorically exclude a proposed action.* The categorical exclusions for procedural actions are:

**311a.** Rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (14 CFR part 71, “Designation of Class A, Class B, Class C, Class D, and Class E Airspace Areas; Airways; Routes; and Reporting Points”). (ATO)

**311b.** Actions regarding: establishment of Federal airways (14 CFR 71.75); operation of civil aircraft in a defense area, or to, within, or out of the United States through a designated Air Defense Identification Zone (ADIZ), (14 CFR part 99, "Security Control of Air Traffic"); authorizations for operation of moored balloons, moored kites, unmanned rockets, and unmanned free balloons (14 CFR part 101, "Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Balloons"); and, authorizations of parachute jumping and inspection of parachute equipment, (14 CFR part 105, "Parachute Operations"). (ATO)

**311c.** Actions to return all or part of special use airspace (SUA) to the National Airspace System (NAS) (such as revocation of airspace or a decrease in dimensions or times of use). (ATO)

**311d.** Modification of the technical description of SUA that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors). (ATO)

**311e.** Designation of controlled firing areas. (ATO)

**311f.** (reserved)

**311g.** Establishment of Global Positioning System (GPS), Flight Management System (FMS), Radio Navigation System (RNAV), or essentially similar systems, that use overlay of existing procedures. (ATO, AFS, AVN, AST)

**311h.** Establishment of helicopter routes that channel helicopter activity over major thoroughfares. (ATO, AFS, AVN)

**311i.** Establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); instrument procedures conducted below 3,000 feet (AGL) that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved instrument procedures conducted below 3,000 feet (AGL) that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. For Air Traffic modifications to procedures at or above 3,000 feet (AGL), the Air Traffic Noise Screening Procedure (ATNS) should be applied. (ATO, AFS, AVN)

**311j.** Implementation of procedures to respond to emergency air or ground safety needs, accidents, or natural events with no reasonably foreseeable long-term adverse effects. (ATO, AST)

**311k.** Publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. (ATO, AFS, AVN)

**311l.** Removal of a displaced runway threshold on an existing runway. (APP, AST)

**311m.** A short-term change in air traffic control procedures, not to exceed six months, conducted under 3,000 feet above ground level (AGL) to accommodate airport construction. (ATO)

**311n.** Tests of air traffic departure or arrival procedures conducted under 3,000 feet above ground level (AGL), provided that: (1) the duration of the test does not exceed six months; (2) the test is requested by an airport or launch operator in response to mitigating noise concerns, or initiated by the FAA for safety or efficiency of proposed procedures; and (3) test data collected will be used to assess operational and noise impacts of the test. (ATO)

**311o.** Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment. (ATO)

**311p.** Establishment of new procedures that routinely route aircraft over non-noise sensitive areas. (ATO, AVN)

**312. CATEGORICAL EXCLUSIONS FOR REGULATORY ACTIONS.** This paragraph provides the list of categorical exclusions for FAA actions involving compliance with, or exemptions to, regulatory programs or requirements. *An action on the categorically excluded list is not automatically exempted from environmental review under NEPA. The responsible FAA official must also review paragraph 304, Extraordinary Circumstances, before finalizing a*

*decision to categorically exclude a proposed action.* The categorical exclusions for regulatory actions are:

**312a.** All FAA actions to ensure compliance with EPA aircraft emissions standards. (AEE)

**312b.** Authorizations and waivers for infrequent or one-time actions, such as an airshow or aviation-related exposition, to include an aerobatic practice box or aerobatic contest box per FAA Order 8700.1, Chapter 48, and parachuting or skydiving events, that may result in some temporary impacts that revert back to original conditions upon action completion. (ATO, AFS)

**312c.** Denials of routine petitions for: (1) exemption; (2) reconsideration of a denial of exemption; (3) rulemaking; (4) reconsideration of a denial of a petition for rulemaking; and (5) exemptions to technical standard orders (TSO's) . (AEE, AFS, AIR, AST, ATO)

**312d.** Issuance of regulatory documents (e.g., Notices of Proposed Rulemaking, and issuance of Final Rules) covering administrative or procedural requirements (Does not include Air Traffic procedures; specific Air Traffic procedures that are categorically excluded are identified under paragraph 311 of this order.). (AFS, AGC)

**312e.** Issuance of special flight authorizations controlled by operating limitations, specified in 14 CFR 21.199, 14 CFR 91.319, 14 CFR 91.611, and 14 CFR 91.859. (AFS, AIR, AEE)

**312f.** Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).

**313-399 RESERVED**

## CHAPTER 4. ENVIRONMENTAL ASSESSMENTS AND FINDINGS OF NO SIGNIFICANT IMPACT

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

**400a. When to prepare an EA.** An EA, at a minimum, must be prepared for a proposed action when the initial review of the proposed action indicates that:

- (1) It is not categorically excluded (see paragraphs 303 and 307-312);
- (2) It is normally categorically excluded but, in this instance, involves at least one extraordinary circumstance that may significantly impact the human environment (see paragraph 304 and the applicable section in Appendix A that deals with the specific resource); or
- (3) The action is not one known normally to require an EIS and is not categorically excluded.

**400b. Actions not causing significant environmental effects.** If, based on an EA, the responsible FAA official determines that the proposed action would not cause a significant environmental effect, the responsible FAA official shall prepare a FONSI for the signature of the approving official.

**400c. Actions causing significant environmental effects.** If, based on an EA, the responsible FAA official determines that the proposed action would cause a significant environmental effect, and mitigation would not reduce that effect below applicable significance thresholds, the responsible FAA official shall publish a notice of intent (NOI) to prepare an EIS in the *Federal Register* and begin the EIS process. Of course, if the responsible FAA official anticipates that significant effects may result, a decision can be made to prepare an EIS without first developing an EA.

**401. ACTIONS NORMALLY REQUIRING AN ENVIRONMENTAL ASSESSMENT (EA).** The following actions are examples of actions that normally require an EA. Some FAA projects involve actions by multiple FAA program offices. The overall significance of these actions, when viewed together, governs whether an EA or an EIS is required.

**401a.** Acquisition of land greater than three acres for, and the construction of, new office buildings and essentially similar FAA facilities.

**401b.** Issuance of aircraft type certificates for new, amended, or supplemental aircraft types for which environmental regulations have not been issued, or new, amended, or supplemental

engine types for which regulations have not been issued, or where an environmental analysis has not been prepared in connection with regulatory action.

**401c.** Evaluation for new, amended, or supplemental commercial launch license applications where an environmental analysis has not been prepared.

**401d.** Establishment of aircraft/avionics maintenance bases to be operated by the FAA.

**401e.** Authorization to exceed Mach 1 flight under 14 CFR 91.817.

**401f.** Establishment of FAA housing, sanitation systems, fuel storage and distribution systems, and power source and distribution systems.

**401g.** Establishment or relocation of facilities such as Air Route Traffic Control Centers (ARTCC), Airport Traffic Control Towers (ATCT), and off airport Air Route Surveillance Radars (ARSR), Air Traffic Control Beacons (ATCB), and Next Generation Radar (NEXRAD).

**401h.** Establishment, relocation, or construction of facilities used for communications (except as provided under paragraph 309a) and navigation that are not on airport property.

**401i.** Establishment or relocation of instrument landing systems

**401j.** Establishment or relocation of approach light systems (ALS) that are not on airport property.

**401k.** Federal financial participation in, or unconditional airport layout plan approval of, the following categories of airport actions:

(1) Airport location.

(2) New runway.

(3) Major runway extension.

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

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

(6) Land acquisition associated with any of the items in paragraph 401k(1) through 401k(5).

**401l.** Issuance of an operating certificate, issuance of an air carrier operating certificate, or approval of operations specifications or amendments that may significantly change the character of the operational environment of an airport, including, but not limited to:

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

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

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

**401m.** New instrument approach procedures, departure procedures, en route procedures, and modifications to currently approved instrument procedures which routinely route aircraft over noise sensitive areas at less than 3,000 feet above ground level (AGL).

**401n.** New or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet AGL.

**401o.** Regulations (and exemptions and waivers to regulations) that may affect the human environment.

**401p.** Special Use Airspace (unless otherwise explicitly listed as an advisory action or categorically excluded under Chapter 3 of this Order). This airspace shall not be designated, established, or modified until:

(1) The notice (notice of proposed rulemaking (NPRM) or non-rule circular) contains a statement supplied by the requesting or using agency that they will serve as lead agency for purposes of compliance with NEPA, and in accordance with paragraph 207, Lead and Cooperating Agencies; (e.g., restricted airspace for military use in accordance with the Memorandum of Understanding (MOU) between the FAA and the Department of Defense (October 4, 2005 1998)).

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

(3) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on any land use problems can be addressed (applicable only if Special Use Airspace extends to the surface).

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

(5) The provisions of p(1)-(4) of this paragraph are not applicable to special use airspace actions if minor adjustments are made such as raising the altitudes; if a change is made in the designation of the controlling or using agency; or if the special use airspace action is temporary in nature and does not exceed 90 days (i.e. temporary military operations area (MOA)).

**402. TIME LIMITS FOR EA's.** The time limits established for all FAA EA's are contained in this paragraph.

**402a.** A draft EA may be assumed valid for a period of three years. If the approving official has not issued an EA/FONSI within three years of receipt of the final draft EA, a written reevaluation of the draft (see paragraph 410) must be prepared by the responsible FAA official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the EA remain applicable, accurate, and valid. If there have been changes in these factors that would be significant in the consideration of the proposal, a supplement to the EA or a new EA must be prepared in accordance with the procedures of this chapter.

**402b.** For approved EA's, two sets of conditions have been established:

(1) If major steps toward implementation of the proposed action (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within three years from the date of issuance of the FONSI, a written reevaluation (see paragraph 410) of the adequacy, accuracy, and validity of the EA will be prepared by the responsible FAA official. If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, as appropriate, a new or supplemental EA will be prepared in accordance with the procedures of this chapter.

(2) If the proposed action is to be implemented in stages or requires successive Federal approvals, a written reevaluation (see paragraph 410) of the continued adequacy, accuracy, and validity of the EA will be made at each major approval point that occurs more than three years after issuance of the FONSI and a new or supplemental EA prepared, if necessary.

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



**404. ENVIRONMENTAL ASSESSMENT PROCESS.** When the responsible FAA official has determined that the proposed action cannot be categorically excluded the responsible FAA official will begin preparing an EA. An EA for an airport capacity project, an aviation safety project, or an aviation security project may qualify and be appropriate for environmental streamlining under provisions of "Vision 100 -- Century of Aviation Reauthorization Act" (see Appendix D), although these provisions are more likely to be applicable to an EIS. Figure 4-1, Environmental Assessment Process, presents the EA review process for a typical action. The responsible FAA official does not need to prepare an EA if FAA has decided to prepare an EIS.

**404a.** The responsible FAA official or applicant gathers data, coordinates or consults with other agencies, and analyzes potential impacts. The responsible FAA official or applicant contacts appropriate Federal, Tribal, State, and local officials to obtain information concerning potential environmental impacts and maintain appropriate contact with these parties for the remainder of the NEPA process. The responsible FAA official or sponsor should involve the public, to the extent practicable, in preparing EA's (see paragraph 208 regarding public involvement for further guidance). Scoping, as described in 40 CFR 1501.7, is not required for an EA, but is optional at the discretion of the responsible FAA official. When the FAA circulates an EA for comment, comments should be responded to, to the extent practicable.

**404b.** Program offices must prepare concise EA documents with a level of analysis sufficient to:

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

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

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

(4) Determine if the responsible FAA official should recommend to the approving FAA official issuance of a FONSI listing: (a) proponent-proposed mitigation to avoid the proposed action's significant impacts; or (b) mitigation the FAA requires to reduce those impacts below applicable significant thresholds.

(5) Provide a comprehensive approach for identifying and satisfying applicable environmental laws, regulations, and executive orders in an efficient manner (see Appendix A). Although the NEPA process does not preclude separate compliance with these other laws, regulations, and executive orders, the responsible FAA official should integrate NEPA requirements with other planning and environmental reviews, interagency and intergovernmental consultation, as well as public involvement requirements to reduce paperwork and delay, in accordance with 40 CFR 1500.4(k) and 1500.5(g).

- (6) Identify any permits, licenses, other approvals, or reviews that apply to the proposed action.
- (7) Identify agencies, including cooperating agencies, consulted.
- (8) Identify any public involvement activities (such as scoping or meetings).

**Figure 4-1 Environmental Assessment Process for a Typical Action**

<b>Step 1</b>	Responsible FAA official or applicant formulates proposed action and reasonable alternatives to achieve the project's purpose and need.
<b>Step 2</b>	Responsible FAA official or applicant collects background data.
<b>Step 3</b>	Responsible FAA official determines need for EA.
<b>Step 4</b>	Initiate optional scoping activities if appropriate and determine issues and alternatives to be addressed.
<b>Step 5</b>	Preparation of EA, including environmental analysis.
<b>Step 6</b>	Circulation and review of draft EA if the responsible FAA official determines the proposed action or other environmental impacts warrant these activities.
<b>Step 7</b>	Revise draft EA
<b>Step 8</b>	Circulate and review final EA
<b>Step 9</b>	Responsible FAA official determines significance of impacts
<b>Step 9a</b>	If impacts are NOT significant, responsible FAA official prepares and issues a FONSI, then proceeds to Step 10
<b>Step 9b</b>	If impacts ARE significant, responsible FAA official proceeds with an EIS (see chapter 5) rather than proceeding with Step 10.
<b>Step 10</b>	Responsible FAA official proceeds with action, and if applicable, mitigation and monitoring.

**404c.** The EA should present detailed analysis, commensurate with the level of impact of the proposed action and alternatives, to determine whether any impacts will be significant. If the proposed action and its alternatives will not cause impacts within specific categories of environmental impacts, a brief statement describing the factual basis for the conclusion that the action is not likely to cause environmental impacts within these impact categories is sufficient. If FAA has experience with an environmental management system (EMS) that includes monitoring of the implementation of actions similar to the proposed action and alternatives, the EMS may provide a factual basis for an assessment of the potential environmental impacts. The EA may also be tiered to cover broad or programmatic proposed actions, such as rulemaking, policy

decisions, and regional or national programs (see also paragraphs 409 and 513 regarding tiering and 40 CFR 1508.28).

**404d.** FAA may adopt, in whole or in part, draft or final EA's or the EA portion of another agency's EA/FONSI. When the FAA adopts an EA or the EA portion of another agency's EA/FONSI, the responsible FAA official must independently evaluate the information contained in the EA, take full responsibility for scope and content that addresses FAA actions, and issue its own FONSI. In the FONSI, the responsible FAA official may also summarize the adopted portion followed by a direct reference to the EA. If more than three years have elapsed since the FONSI was issued by another agency and the FAA has yet to issue its own FONSI, the responsible FAA official must prepare a written reevaluation of the other agency's EA in accordance with the procedures of paragraph 410. To ensure that the EA is both concise and clear about the bases for its conclusions, FAA may incorporate by reference other documents and analyses. An EA may incorporate by reference information or analysis that is reasonably available to the public, either in existing NEPA documents or in general background information, documents or studies prepared for other purposes.

**404e.** Internal review of the EA is conducted by potentially affected FAA program offices having an interest in the proposed action to assure that all FAA concerns have been addressed technically, and with AGC or Regional Counsel to assure that the EA is legally sufficient. For projects that originate in or are approved at FAA headquarters, the EA and FONSI shall be reviewed by AGC for legal sufficiency. For projects that originate in and are approved by the regions, the EA and FONSI shall be reviewed by regional counsel. The responsible FAA official should contact the program offices to determine appropriate levels of coordination. The responsible FAA official should consult with AEE (AEE-200) for general advice on compliance with NEPA and other applicable environmental laws, regulations, and executive orders, especially for actions of national importance or which are highly controversial.

**404f.** EA's should be coordinated with agencies outside of the FAA when an action involves resources protected by special purpose laws or administrative directives. Agencies with special expertise may also be consulted. Examples of these laws or directives include, but are not limited to actions involving: section 404 of the Clean Water Act; section 4(f) of the DOT Act; section 106 of the National Historic Preservation Act; Marine Mammal Protection Act, section 7 of the Endangered Species Act; section 307 of the Coastal Zone Management Act; and executive orders.

**404g.** Upon review of the completed EA, public comments, and applicable interagency and intergovernmental consultation (see paragraph 213), the responsible FAA official will determine whether any environmental impacts analyzed in the EA are significant. If the responsible FAA official determines that these impacts do not exceed applicable significance levels, or mitigation discussed in the EA and made an integral part of the project clearly will reduce identified impacts below significance levels, the responsible FAA official will prepare a FONSI. The approving official, who may also be the responsible FAA official, will then review and sign the FONSI. This FONSI can conclude that no significant impacts are expected. Alternatively the responsible FAA official may deem certain mitigations are necessary to prevent significant environmental

impacts, make the mitigation a condition of project approval, and then issue a FONSI. If the responsible FAA official determines that mitigation will not reduce significant environmental impacts below applicable significance thresholds, the responsible FAA official will publish a Notice of Intent (NOI) to prepare an EIS in the Federal Register to proceed.

**404h.** If the FAA, as a commenting or cooperating agency, does not accept an EA prepared by another agency, the responsible FAA official shall specify in his or her comments to that agency whether any additional information is needed or describe the mitigation measures the FAA considers necessary to grant or approve an applicable permit, license, or related requirements or concurrences. If the responsible FAA official comments on the action agency's predictive methodology, the responsible FAA official should describe the preferred alternative methodology and explain why the FAA prefers this methodology.

**Figure 4-2. Environmental Assessment Content**

<b>PURPOSE</b>	<p>Assist agency planning and decision-making by summarizing environmental impacts to determine need for:</p> <ul style="list-style-type: none"> <li>• An EIS</li> <li>• Mitigation Measures</li> </ul>
<b>SCOPE</b>	<p>Addresses the proposed action's and reasonable alternatives' impacts on affected environmental resources.</p>
<b>CONTENT</b>	<p>Describes and identifies:</p> <ul style="list-style-type: none"> <li>• Purpose and need for the proposed action.</li> <li>• Proposed action.</li> <li>• Reasonable alternatives considered (including the no action alternative).</li> <li>• Affected environment (existing conditions).</li> <li>• Environmental consequences of the proposed action and alternatives.</li> <li>• Mitigation.</li> <li>• Agencies, organizations, and persons consulted.</li> </ul>
<b>PUBLIC PARTICIPATION</b>	<ul style="list-style-type: none"> <li>• Provide the opportunity to the extent practicable.</li> </ul>

**405. SAMPLE ENVIRONMENTAL ASSESSMENT FORMAT** Figure 4-2, Environmental Assessment Content, presents an overview of the EA process, and the following text describes the contents and purpose of an EA. The CEQ regulations do not specify a required format for an EA (see 40 CFR 1508.9); however, following the sample format will facilitate preparation of an EA, or EIS if an EIS is needed, and integrate compliance with other environmental laws, regulations, and Executive Orders with NEPA review. The following sample format for an EA is optional for FAA program offices to use.

**405a. Cover Page.** This page, labeled “Environmental Assessment,” identifies the proposed action and its geographic location. When EA's are prepared by an applicant or contractor for an applicant, the following notification would be located at the bottom: “This Environmental Assessment becomes a Federal document when evaluated and signed and dated by the responsible FAA official.”

**405b. Proposed Action.** This discussion describes the proposed action with sufficient detail in terms that are understandable to individuals who are not familiar with aviation or commercial aerospace activities.

**405c. Purpose and Need.** This discussion identifies the problem facing the proponent (that is, the need for an action), the purpose of the action (that is, the proposed solution to the problem), and the proposed timeframe for implementing the action. The purpose and need for the proposed action must be clearly justified and stated in terms that are understandable to individuals who are not familiar with aviation or commercial aerospace activities. To provide context while keeping this section of the EA brief, FAA may incorporate any supporting data, inventories, assessments, analyses, or studies by reference.

**405d. Alternatives (Including Proposed Action).** The alternatives discussed in an EA will include those to be considered by the approving official. Section 102 (2)(E) requires only a brief discussion of alternatives that provides sufficient information for the decision maker to choose an option that meets the need for the proposal and demonstrates reasoned decision-making. There is no requirement for a specific number of alternatives or a specific range of alternatives to be included in an EA. An EA must consider the proposed action and a discussion of the consequences of taking no action, and may limit the range of alternatives to action and no action when there are no unresolved conflicts concerning alternative uses of available resources. Other reasonable alternatives are to be considered in preparing an EA to the degree commensurate with the nature of the proposed action and agency experience with the environmental issues involved. Generally, the greater the degree of impacts, the wider the range of alternatives that should be considered. For a proposal having greater impacts and a wider range of alternatives, the responsible official is encouraged to consider: (1) ways that the project purposes can be achieved with less harmful impacts on the environment; and (2) alternatives proposed by the public or another agency, provided that such alternatives are reasonable, feasible, and achieve the project's purpose. The extent of active participation in the NEPA process by the proponent of the alternative also bears on the extent to which a proffered alternative deserves consideration. Whether a proposed alternative is reasonable depends upon the extent to which it meets the purpose and need for the proposed action (see also paragraph 506e for more information on alternatives). The EA briefly presents the environmental impacts of the proposed action and the reasonable alternatives in comparative form to sharply define the issues and provide a clear basis for choice among options by the approving official. For alternatives considered but eliminated from further study, the EA will briefly explain why these were eliminated. The alternatives discussion of the EA includes:

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

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

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

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

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

**405e. Affected Environment.** This section shall succinctly describe existing environmental conditions of the potentially affected geographic area(s). This discussion may highlight important background material, such as previous and reasonably foreseeable development and actions, whether Federal or non-Federal. It also may include such information as actions taken or proposed by the community or citizen groups pertinent to the proposal, or any other unique factors associated with the action. However, data and analyses should be pertinent to the impact and commensurate with its importance. FAA may incorporate by reference such background data as necessary to support the analysis. The discussion of the affected environment in the EA may include the following, if appropriate:

(1) Location map, vicinity map, project layout plan, and photographs.

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

(3) Political jurisdictions affected by the proposed action.

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

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

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

**405f. Environmental Consequences.**

(1) At a minimum, the EA must discuss the reasonably foreseeable environmental consequences of the proposed and no action alternatives in comparative form. The description of environmental impacts must respond to substantive issues and provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI. 40 CFR 1508.9(a)(1). The environmental effects section must include that analysis which the agency determines is necessary to address the significance factors of 40 CFR 1508.27. The focus of this analysis is upon resources that would be directly, indirectly and cumulatively affected by the proposed action. To avoid excessive length, the effects section may incorporate by reference such background data as necessary to support its effects analysis. Environmental impacts of other alternatives that are being considered in detail should also be discussed in the EA. Any adverse environmental effects that cannot be avoided if the proposed action is implemented and mitigation, if applicable, must be discussed. This section should not duplicate discussions in the Alternatives section. Instead, the environmental consequences section shall, for each alternative, include considerations of the following effects (40 CFR 1508.8):

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

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

(c) Cumulative effects and their significance (Cumulative effects may result from individually minor but collectively significant actions taking place over a period of time. 40 CFR 1508.7. In determining whether a proposed action will have a significant impact, the EA shall include considerations of whether the action is related to other actions with individually insignificant but cumulatively significant impacts. 40 CFR 1508.27(b)(7). This analysis shall include identification and consideration of the cumulative impacts of ongoing, proposed, and reasonably foreseeable future actions and may include information garnered from FAA NEPA processes and, where available, environmental management systems. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts. For further discussion, see CEQ “Considering Cumulative Effects Under the National Environmental Policy Act,” January 1997);

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

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

(2) For those types of impacts that the proposed action and alternatives would have, directly or indirectly, the analysis required in the respective environmental impact categories

listed in Appendix A shall be discussed to the level of detail necessary to determine the significance of the impact.

(3) Appendix A, Analysis of Environmental Impact Categories, briefly describes the major laws, regulations, and executive orders in addition to NEPA that must be complied with for different impact areas before a proposed Federal action is approved. A proposed Federal action may fall within the purview of one or more of these requirements. The responsible FAA official must assure that proposed Federal actions comply with applicable requirements. To reduce paperwork and delay, and to assure that the necessary approvals and permits will be issued with or immediately following issuance of the EA and FONSI, the responsible FAA official should (1) identify the timeframes established for review by the oversight agency; (2) identify the information that the FAA will need to provide to the oversight agency to complete its review; and (3) integrate these into the EA process. An EA should include the information required to demonstrate compliance, as appropriate, with other applicable requirements.

**405g. Mitigation.** The EA may include reasonable mitigation measures. If mitigation is discussed, it shall be in sufficient detail to describe the benefits of the mitigation. Each impact category in Appendix A identifies conditions that normally indicate a threshold beyond which the impact is considered significant and an EIS is required for the action (see also paragraph 506h regarding mitigation). If the EA contains mitigation measures necessary to reduce potentially significant impacts below applicable significance thresholds, an EIS is not needed and the approving official may issue a FONSI provided that:

- (1) The agency took a “hard look” at the problem.
- (2) The agency identified the relevant areas of environmental concern.
- (3) The EA supports the agency’s determination that the potential impacts will be insignificant.
- (4) The agency has identified mitigation measures that will be sufficient to reduce potential impacts below applicable significance thresholds and has assured commitments to implement these measures.

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

**405h. List of Preparers.** When an EA is prepared by the FAA, the EA must include a list of the names and qualifications of personnel who prepared the EA. When EA's are prepared for the FAA, the EA must list the names and qualifications of the preparers of an EA. Contractors will be identified as having assisted in, or having prepared, the EA.



**405i. List of Agencies and Persons Consulted.** The EA must include a list of agencies and persons consulted.

**405j. Appendixes.** The EA may include the following appendixes, if applicable:

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

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

(3) A summary of public involvement, including evidence of the opportunity for a public hearing, if required under applicable Federal laws (The Airport Act; 49 U.S.C. 47106c), regulations, and Executive Orders, and a summary of issues raised at any public hearing or public meeting as well as responses to substantive comments.

#### **406. FINDING OF NO SIGNIFICANT IMPACT (FONSI).**

**406a. Purpose.** The purpose of an EA is to document the FAA determination as to whether or not a proposed action has the potential for significant environmental impacts. If none of the potential impacts is likely to be significant, then the responsible FAA official shall prepare a finding of no significant impact (FONSI), which briefly presents, in writing, the reasons why an action, not otherwise categorically excluded, will not have a significant impact on the human environment, and the Approving Official may approve it. Issuance of a FONSI signifies that the FAA will not prepare an EIS and has completed the NEPA process for the proposed action. (The issuance of a FONSI does not mean that the agency has decided to act, only that it has found that the proposed action will not have a significant impact on the environment, see paragraph 408.) An overview of a FONSI is presented in Figure 4-3, Findings of No Significant Impact Overview.

**406b. Scope of Documentation.** The CEQ regulations do not specify a format for FONSI's, but FONSI's must contain the information discussed in 40 CFR 1508.13.

(1) The FONSI may be attached to an EA, or the EA and FONSI may be combined into a single document. If the EA is not attached or combined with FONSI, the FONSI must include a summary of the EA and note any other environmental documents related to it. If the EA is attached or included with the FONSI, the FONSI does not need to repeat any of the discussion in the EA but may incorporate it by reference. However, the FONSI shall briefly describe the proposed action, its purpose and need, the alternatives considered, including the no action alternative, and assess and document all relevant matters necessary to support the conclusion that the action is not a major Federal action significantly affecting the quality of the human environment. The degree of attention given to different environmental factors will vary

according to the nature, scale, and location of the proposed action, and thus, depending on the complexity and degree of impact of a proposed action, a FONSI may range in content from a simple conclusion, supported with pertinent facts, that the action is not a major action significantly affecting the quality of the human environment, to an analysis involving the format and content necessary for EIS's.

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

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

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

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

<b>PURPOSE</b>	Documents Finding of No Significant Impact (FONSI) and supporting mitigation measures that will be taken.
<b>SCOPE</b>	Explains why an action will not have a significant effect on the human environment.
<b>CONTENT</b>	<p>A conclusion that an action will not have a significant effect on the environment. (See paragraph 406c(3).)</p> <p>Describes the proposed action, its purpose and need, and alternatives considered, including the no action alternative.</p> <p>Assesses information necessary to support findings and determinations.</p> <p>Describes applicable mitigation measures necessary to ensure that the preferred alternative will not significantly affect the environment and that are a condition of project approval.</p> <p>Describes changes that have been made in the proposed action to eliminate significant impacts.</p> <p>Includes statement of consistency or inconsistency with community planning from State and local governments, and Tribes, for impacts on a reservation.</p> <p>Attaches the EA or a summary of the EA for reference.</p>
<b>PUBLIC PARTICIPATION</b>	<p>Varies as appropriate (see 40 CFR 1501.4(e)(1) and 1506.6, and also CEQ's "40 Most Asked Questions," number 37).</p> <p>In certain cases (e.g., actions similar to those normally addressed in an EIS or where the nature of the proposed action is one without precedent), a 30-day public comment period is required before proceeding with action (see 40 CFR 1501.4(e)(2) and CEQ's "40 Most Asked Questions," number 38).</p> <p>Agencies also must allow a period of public review of the FONSI, for example, if the proposed action would be located in a floodplain or wetland (E.O. 11988, section 2(a)(4), and E.O. 11990, Sec. 2(b)).</p>

**406c. Internal Review Process and Approval.**

**(1) FONSI's originating in the regions.** The responsible FAA official will coordinate the review of the FONSI and underlying EA with affected program divisions and Regional Counsel. The responsible FAA official should contact affected program offices to obtain guidance on program office procedures for coordination. This internal review is to ensure that related foreseeable agency actions by other FAA elements are properly covered in the statement

or finding and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out. Unless the proposed action is opposed on environmental grounds by a Federal or state government, Tribe, or local agency, a Division Manager may request a waiver of the Regional Counsel's legal sufficiency review. Requests must be made to AGC-600. Upon such request, only AGC-600 may waive Regional Counsel's review of the EA and FONSI for legal sufficiency. After appropriate coordination with interested program offices and review by Regional Counsel, the Division Manager or designee may approve the FONSI.

**(2) FONSI's originating in the Washington, D.C. headquarters.** The responsible FAA official will coordinate the review of the FONSI and underlying EA with affected program divisions, AEE, and AGC. The responsible FAA official should contact affected program offices to obtain guidance on program office procedures for coordination. Upon request from a Program or Office Director, AEE may waive its review. Upon such request, AGC-600 may also waive its review of the EA and FONSI for legal sufficiency unless the proposed Federal action is opposed on environmental grounds by a Federal, state, or local agency or Tribe. After appropriate coordination and review by AGC for legal sufficiency, the approving official may approve the FONSI.

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

After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in section 101 of the NEPA and other applicable environmental requirements and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(C) of NEPA.

APPROVED: \_\_\_\_\_ DATE: \_\_\_\_\_

**406d. Agency Distribution.** A copy of the FONSI and EA shall be sent to reviewing agencies and organizations or individuals that made substantive comments or specifically requested copies. When a project involves a resource protected under a special purpose law or administrative directive (see paragraph 404f), the responsible FAA official should send a signed copy of the FONSI and the EA supporting it to the agency(ies) with whom FAA consulted to comply with the applicable law or directive and to any party requesting copies of those documents.

**406e. Public Review in Special Circumstances.** The responsible FAA official must determine whether any of the following circumstances apply, and if so, allow for the appropriate amount of public review.

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

public review period may run concurrently with any other Federal review. These circumstances are:

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

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

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

**406f. Internal Distribution.** The FONSI and EA are filed in the office of the responsible FAA official. A copy of the FONSI and EA shall be sent to the affected program offices, if requested by those offices.

**406g. Public Availability.** The CEQ regulations state that Federal agencies shall make FONSI's available to interested or affected persons or agencies (see 40 CFR 1506.6). Methods of announcing the availability of a FONSI, such as publication in local newspaper or notice through local media, are described in 40 CFR 1506.6(b). The announcement will indicate locations at which the FONSI and its associated EA are available. Copies of FONSI's and associated EA's will be provided, on request, free of charge or at a fee commensurate with the cost of reproduction.

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

#### **408. DECISION DOCUMENTS FOR FINDINGS OF NO SIGNIFICANT IMPACT.**

**408a.** Immediately following the approval of a FONSI, except in the circumstances identified in paragraph 406e, the FAA decisionmaker may decide whether to take the proposed action. Mitigation measures that were made a condition of approval of the FONSI and the steps

taken to assure appropriate commitment and follow-up of mitigation measures shall be included in the FONSI and incorporated in the decision to implement the action. If the FAA decides to proceed with the proposed Federal action, then the decision may be included with the FONSI or in a separate decision document that accompanies the FONSI, called a FONSI/ROD. The FAA FONSI/ROD has the same general content and format as one that would be prepared following an EIS, including a paragraph that identifies the document as a decision/order that is, in most cases, subject to exclusive judicial review in the U.S. Circuit Courts of Appeals. This terminology assures consistent content in FAA ROD's and highlights the legal distinction between a finding of no significant impact and the agency decision to take action based upon the FONSI that forms the basis for judicial review. Preparation of a record of decision to proceed with an action for which a FONSI has been approved is optional. A record of decision is recommended in the circumstances described in paragraph 408b. If the responsible FAA official prepares a record of decision, it should include a description of the action, the location and timing of the action, the FONSI, any other required findings or determinations, and the signature, name, title, address, and telephone number of the approving FAA official.

**408b.** The responsible FAA official should prepare formal documentation of the decision to proceed (e.g., a record of decision (ROD) or FONSI/ROD) for:

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

(2) Actions that are highly controversial.

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

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

In cases of doubt, the responsible FAA official should consult the Office of the Chief Counsel (AGC-600) or Regional Counsel.

**409. TIERING AND PROGRAMMATIC ENVIRONMENTAL ASSESSMENTS.** The concept of tiering for EIS's may be used for preparing EA's. The responsible FAA official may tier off completed EA's and EIS's if the official finds that these are current and meet FAA requirements. Permitting and review agencies may have independent requirements for review of previously prepared documents (see paragraph 513).

**410. WRITTEN RE-EVALUATION.** (see paragraphs 402 and 404d)

**410a.** The preparation of a new FONSI is not necessary when it can be documented that the:

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

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

(3) Pertinent conditions and requirements (all) of the prior approval have, or will be, met in the current action.

**410b.** This evaluation, signed by the responsible FAA official, will either conclude the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new EA.

**410c.** The written re-evaluation should be reviewed internally at the discretion of the responsible FAA official.

#### **411. REVISED OR SUPPLEMENTAL ENVIRONMENTAL ASSESSMENTS OR FONSI's.**

**411a.** The agency prepares supplements to an EA if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Significant information is information that paints a dramatically different picture of impacts compared to the description of impacts in the EA. The agency also may prepare supplements when the purposes of NEPA will be furthered by doing so.

**411b.** The agency prepares, circulates, and issues as appropriate a supplement to a EA in accordance with the procedures of this chapter.

**411c.** The preparation of a new EA is not necessary if conditions in paragraph 410 are met. If a supplement changes a FONSI, a new FONSI must be issued.

#### **412.-499. RESERVED.**

## CHAPTER 5. ENVIRONMENTAL IMPACT STATEMENTS AND RECORDS OF DECISION

### 500. INTRODUCTION.

**500a.** This chapter summarizes and supplements CEQ requirements for Environmental Impact Statements (EIS's) and Records of Decision (ROD's).

(1) EIS's are summarized as follows:

- An EIS is a clear, concise, and appropriately detailed document that provides the agency decisionmakers and the public with a full and fair discussion of significant environmental impacts of the proposed action and reasonable alternatives (40 CFR 1502.1) and implements the requirement in NEPA section 102(2)(C) for a detailed written statement.
- Using an interdisciplinary approach (40 CFR 1501.2(a)), an EIS describes the purpose and need of the proposed action (40 CFR 1502.13), the affected environment (40 CFR 1502.15), and, in a comparative form, the environmental effects of the alternatives, including the proposed action, the no action alternative, and other reasonable alternatives (including those not within the agency's jurisdiction and those that would avoid or minimize adverse impacts (40 CFR 1502.13 and 1502.14).
- An EIS discusses means to mitigate adverse environmental impacts if not covered in the discussion of alternatives (40 CFR 1502.14(f)) and identifies unavoidable impacts (40 CFR 1502.16).
- An EIS identifies possible conflicts between the proposed action and the objectives of Federal, regional, State, Tribal and local land use plans, policies, and controls for the area concerned (40 CFR 1502.16(c)), and the extent to which the agency would reconcile its proposed action with the plan or law (40 CFR 1506.2(d)).
- If reasonable alternatives are eliminated from detailed study, the EIS briefly discusses the reasons why these alternatives were eliminated (40 CFR 1502.14(a)).
- The EIS identifies the agency-preferred alternative or alternatives in the draft EIS if a preferred alternative exists and in the final EIS unless another law prohibits the selection of a preference (40 CFR 1502.14(e)).
- An EIS identifies methodologies and sources used (40 CFR 1502.24), identifies where information is incomplete or unavailable (40 CFR 1502.22), lists the preparers (40 CFR 1502.17), lists the agencies, organizations, and persons to whom copies of the EIS are sent (40 CFR 1502.10(i)), and summarizes the major conclusions, areas of controversy (including issues raised by agencies and the public), and issues to be resolved (40 CFR 1502.12)).
- The final EIS also includes the agency's response to comments (40 CFR 1502.9(b) and 1503).



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

**500b.** The depth of analysis and documentation of impacts will be in direct proportion to the potential significance of the impacts. EIS's should give greater emphasis to significant impacts and less emphasis to insignificant impacts. A significant impact is identified generally through the scoping process, through analysis of the direct, indirect, and cumulative effects of the proposed action, and in comparison with FAA's threshold of significance for each impact category. As in an EA, the discussion in an EIS of insignificant impacts is generally limited to an explanation of why further analysis of these impacts is not warranted with supporting documents incorporated by reference. See 40 CFR 1500.4(g) (Reducing paperwork), 1500.4(j) (Reference), 1501.1(d) (Purpose), and 1501.7 (Scoping).

**500c.** An EIS is required when impacts of the proposed action, including mitigation, remain significant. Cumulative impacts of the proposed action must also be considered in determining significance (see 40 CFR 1508.7, 1508.8, 1508.25, and 1508.27(b)(7) and CEQ guidance for Considering Cumulative Effects Under the National Environmental Policy Act, January 1997). A series of actions, when assessed on an individual basis, may each have a limited environmental impact. However, the same series of actions may have a significant cumulative impact when assessed with other Federal and non-Federal actions that are ongoing or are reasonably foreseeable (40 CFR 1508.7 and 1508.27(b)(7)).

(1) Connected actions should be considered in the same EIS. Connected actions are closely related actions that: (a) automatically trigger other actions which may require environmental impact statements; (b) cannot or will not proceed unless other actions are taken previously or simultaneously; or (c) are interdependent parts of a larger action and depend on the larger action for their justification (40 CFR 1508.25(a)(1)). Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts (40 CFR 1508.27(b)(7)). Proposed actions or parts of proposed actions which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement (40 CFR 1508.25(3)).

(2) Cumulative actions should also be discussed in the same EIS. A proposed action would contribute to cumulative impacts when its effects are added to those of past, present, and reasonably foreseeable future actions, whether Federal or non-Federal. If the proposed action causes the cumulative impacts of these non-project actions to exceed an applicable significant

threshold, then the proposed action would be one causing the significant impact (40 CFR 1508.25(a)(2)).

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

(4) CEQ regulations encourage "tiering" from broad EIS's (programmatic EIS's) to subsequent, site-specific EIS's or EA's. The regulations also allow EA or EIS preparers addressing the impacts from a proposed action's later stages to use the EIS or EA prepared for the action's earlier stages. The preparers would use the document addressing the earlier stages as a reference or supplement to the EIS or EA discussing the later stages (40 CFR 1502.4(c)(3) and 1508.28). See paragraph 513.

**500d.** In cases of doubt as to whether an EIS is necessary for a particular action, the responsible FAA official should consult with the AGC, Regional Counsel, or AEE. Airports personnel should contact APP-600.

**500e.** An EIS for an airport capacity project, an aviation safety project, or an aviation security project may qualify and be designated for environmental streamlining under the provisions of "Vision 100 -- Century of Aviation Reauthorization Act" (see Appendix D). An airport infrastructure project may also be selected for review under Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

**501. ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS (EIS).** An EIS shall be prepared for major Federal actions significantly affecting the quality of the human environment. The term "major" reinforces but does not have a meaning independent of "significantly" (40 CFR 1508.18). Significance is defined in terms of context and intensity as follows:

**501a. Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

**501b. Intensity.** This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment. (40 CFR 1508.27).

**501c.** Paragraphs 400 and 401 list actions normally requiring an EA. If the analysis in the EA of environmental impact categories discussed in Appendix A indicates that impacts will be significant, then the responsible FAA official would prepare an EIS and the EA may be used in the scoping process described below; however, if the responsible FAA official has decided to prepare an EIS, an EA need not be prepared.

**501d.** The addition of mitigation to reduce impacts below significance may avoid the requirement to prepare an EIS. If mitigation is integrated into the design of the proposed action, or if, through scoping or the EA process the proposed action is redefined to include mitigation, or if all potentially significant impacts are mitigated below thresholds of significance, then the responsible FAA official may rely on the mitigation measures in determining that the overall effects would not be significant and prepare an EA/FONSI. See chapter 4, paragraph 406e regarding public review of EA/FONSI in special circumstances.

**501e.** After an EA has been prepared, or if the responsible FAA official decides to omit the EA, an EIS shall be prepared if the FAA action:

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

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

(3) is likely to have significant impact on natural, ecological (e.g., invasive species), or scenic resources of Federal, Tribal, State, or local significance (for example: Federally listed or proposed endangered, threatened, or candidate species, or designated or proposed critical habitat); resources protected by the Fish and Wildlife Coordination Act; wetlands; floodplains; coastal zones; prime, unique, State or locally important farmlands; energy supply and natural resources; and wild and scenic rivers, including study or eligible river segments and solid waste management.

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

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

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

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

(8) has a significant impact on water quality or sole source aquifers, or contaminates a public water supply system, or violates State or Tribal water quality standards established under the Clean Water Act and the Safe Drinking Water Act.

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

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

**502. IMPACT CATEGORIES.** The responsible FAA official should review Appendix A to identify the level of analysis needed in the EIS for each applicable environmental impact category. The responsible FAA official should include in the EIS, under appropriate impact categories, all applicable permit or license requirements. The EIS also will report on the status of any special consultation required, such as consultation under the Endangered Species Act, the National Historic Preservation Act, the Fish and Wildlife Coordination Act, Archeological Resources Protection Act, or American Indian Religious Freedom Act. These reviews should occur concurrently with the NEPA process. The level of analysis for categories not significantly impacted should be similar to the level of analysis in an EA (i.e., enough to support a no significant impact determination; see paragraph 404c). These impacts will be discussed in as much detail as is necessary to support the comparisons of alternatives and agency decisionmaking. Many of the impact categories listed in Appendix A are interrelated, and, therefore, the responsible FAA official should first review the impact category of concern and then the remaining related categories for guidance.

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

**Figure 5-1. An Overview of the Environmental Impact Statement Process**

<b>Step 1</b>	Responsible FAA official or applicant formulates proposed action and a preliminary range of alternatives.
<b>Step 2</b>	Responsible FAA official or applicant collects background data and analyzes information.
<b>Step 3</b>	Responsible FAA official determines need for EIS (anticipated significant impact).
<b>Step 4</b>	Notice of Intent (NOI) published in <i>Federal Register</i> and local press.
<b>Step 5</b>	Initiate scoping activities, inviting participation of affected agencies and interested persons and determining issues and alternatives to be addressed.
<b>Step 6</b>	Environmental Analysis.
<b>Step 7</b>	Write Draft EIS
<b>Step 8</b>	Make copies of Draft EIS available to public for review and comment.
<b>Step 9</b>	Publish Notice of Availability in <i>Federal Register</i> and file with EPA.
<b>Step 10</b>	Public comment period on draft EIS (45-day minimum required).
<b>Step 11</b>	Responsible FAA official receives and evaluates comments. Comment periods may be extended (see paragraph 507)
<b>Step 12</b>	Revise Draft EIS after consideration of public comments
<b>Step 13</b>	Make copies of Final EIS or Executive Summary available to public, to include all commentors.
<b>Step 14</b>	Publish Notice of Availability of FEIS in Federal Register and file with EPA.
<b>Step 15</b>	Responsible FAA official must wait a minimum of 30 days (see paragraph 507) to allow for review by EPA and possible referral to CEQ (see paragraph 517), or to allow for requests of reconsideration or technical corrections, or for appeals under a lead agency's formal administrative appeals process.
<b>Step 16</b>	Approving FAA official prepares and issues ROD
<b>Step 17</b>	Proceed with action, mitigation, and monitoring.

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

40 CFR 1508.22). If a scoping meeting is being planned (see paragraph 505 regarding scoping) and sufficient information is available at the time, the NOI should also announce the meeting, including the time and place of the meeting, and any other appropriate information, such as the availability of a scoping document. Otherwise, the scoping meeting may be announced separately. If the responsible FAA official is using the NOI to satisfy public notice and comment requirements of other environmental laws, regulations, or executive orders in addition to NEPA, the NOI should include a statement to that effect with a reference to the specific law, regulation, or executive order. The responsible FAA official should consider also publishing the NOI, notices of scoping meetings, and other information in other formats pursuant to Order DOT 5610.1C, paragraph 14a and CEQ regulations section 1506.6.

**504a.** The responsible FAA official sends the NOI, the original and three copies, to the docket clerk in the Office of the Chief Counsel (AGC-200). All NOI's initiated in the regions should be reviewed by the Regional Counsel before being forwarded to AGC-200. The applicable division manager or designee may sign the NOI for the *Federal Register*.

**504b.** In addition to publishing the NOI, the responsible FAA official develops a strategy for assuring an interdisciplinary approach (40 CFR 1502.6 and 1507.2) and develops the EIS outline, schedule, and management framework.

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

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

**505. SCOPING.**

**505a.** Scoping is an early and open process for determining the scope of issues to be addressed in the EIS and identifying the significant issues related to a proposed action (40 CFR 1501.7). It is an important and required part of the EIS process. The purpose of scoping is to identify significant environmental issues to be analyzed in greater depth, identify and eliminate from detailed study issues that are insignificant or which have been covered by prior environmental review, and set the temporal and geographic boundaries of the EIS. Scoping also allows the responsible FAA official to identify available technical information and additional reasonable alternatives. Information obtained from scoping can be used to insure that planning and decisions reflect environmental values and that delays and conflicts are reduced later in the process. There are no requirements for a scoping meeting or for a specific number of meetings. Depending on the nature and complexity of the action, some or all of the information needed during the scoping process may be obtained by letter, telephone, or other means (see Appendix A, Analysis of Environmental Impact Categories, and Council on Environmental Quality Scoping Guidance). A scoping meeting may be appropriate when the impacts of a particular action are confined to specific sites. If an EA has been prepared, the responsible FAA official may use it as the vehicle for scoping. Alternatively, the responsible FAA official may prepare a scoping document. A scoping document is extremely useful if the scoping is done by mail or telephone, or the proposed action's location or locations are so remote, scattered, or widespread that affected agencies and other interested persons are unable to visit the site or sites.

**505b.** The responsible FAA official must take the lead in the scoping process, inviting the participation of affected Federal, State, and local agencies, any affected Tribe, the applicant of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), determining the issues to be analyzed in depth, identifying other environmental review and consultation requirements, and assigning responsibilities among lead and cooperating agencies for inputs to the EIS. If appropriate, a scoping meeting(s) can be held. Scoping meetings provide the opportunity to present additional background on the action and solicit input from those interested and affected parties in attendance to:

- (1) Determine the scope of analysis required within the EIS;
- (2) Identify and eliminate insignificant issues and those covered in previous environmental reviews;
- (3) Identify alternatives; and
- (4) Indicate any other EA's or EIS's that are being or will be prepared which are related to but not part of the scope of the EIS under consideration.

**505c.** Consultation with appropriate agencies is initiated at this point. Local units of governments, Federal and State agencies, and Tribes should be consulted early in the process of preparing an EIS. For example, where access, intermodal transfer, or other ground transportation



issues are involved, consultation with the appropriate metropolitan planning organization or State Department of Transportation and compliance with State Implementation Plans under the Clean Air Act (CAA) is important. Comments on the impacts of the proposed action will be considered, as appropriate, in preparing the EIS.

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

**506a. Cover Page.** This single page will include:

- (1) A list of the responsible lead and cooperating agencies (identifying the lead agency);
- (2) The title of the proposed action (together with the State(s) and county(ies) where the action is located);
- (3) The name, address, and telephone number of the responsible FAA official;
- (4) The designation of the statement as draft, final, or supplement;
- (5) A one paragraph abstract of the EIS with a heading as follows: DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION; and
- (6) For DEIS's, a statement that this EIS is submitted for review pursuant to the following public law requirements and list those that are applicable, such as section 102(2)(C) of the National Environmental Policy Act of 1969, and section 4(f) of the DOT Act.

**506b. Executive Summary.** An executive summary will be included to adequately and accurately summarize the EIS. The summary describes the proposed action, stresses the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). It also discusses major environmental considerations and how these have been addressed, summarizes the analysis of alternatives, and agency preferred and sponsor preferred alternatives. If the agency has identified an environmentally preferred alternative, it may also be included. It discusses mitigation measures, including planning and design to avoid or minimize impacts. It identifies interested agencies, lists permits, licenses, and other approvals that must be obtained, and reflects compliance with other applicable environmental laws, regulations, and executive orders.

**506c. Table of Contents.** The table of contents lists the chapters, figures, maps, tables, and exhibits presented throughout the EIS. It will also list the appendixes, if any, and the list of acronyms, glossary, references, and an index.

**506d. Purpose and Need.** This section briefly specifies the underlying purpose and need for the federal action. It presents the problem being addressed, how the alternatives would resolve the problem, and the benefits of the federal action. It distinguishes between the need for the

proposed action and the desires or preferences of the agency or applicant, and essentially provides the parameters for defining a reasonable range of alternatives to be considered.

**506e. Alternatives, Including the Proposed Action.** This section is the heart of the EIS (see 40 CFR 1502.14; see also 40 CFR 1502.10(e) and paragraph 405d for more information on alternatives). It presents a comparative analysis of the no action alternative, the proposed action, and other reasonable alternatives to fulfill the purpose and need for the action. Although CEQ encourages Federal agencies to identify the environmentally preferred alternatives in the EIS (see CEQ's "40 Most Asked Questions," number 6), CEQ regulations do not require that discussion until the ROD. Reasonable alternatives not within the jurisdiction of the lead agency should be considered. (see 40 CFR 1502.14(c)) The FAA may include alternatives proposed by the public or another agency. However, they must meet the basic criteria for any alternative: it must be reasonable, feasible, and achieve the project's purpose. The extent of active participation in the NEPA process by the proponent of the alternative also bears on the extent to which a proffered alternative deserves consideration. To provide a clear basis of choice among the alternatives, graphic or tabular presentation of the comparative impact is recommended. This section also presents a brief discussion of alternatives that were not considered reasonable due to their inadequacy in meeting the purpose and need for the proposed action. The FEIS must specifically and individually identify the preferred alternative. Criteria other than those included in the affected environment and environmental consequences section of the EIS may be applied to identify the preferred alternative.

**506f. Affected Environment.** This section describes the existing environmental conditions of the potentially affected geographic area or areas. The discussion of the affected environment will be no longer than is necessary to understand the effects of the alternatives; data and analyses should be presented in detail commensurate with the importance of the impact. To ensure that this section emphasizes the important aspects of the effects on the environment, the discussion should summarize and incorporate by reference information or analysis that is reasonably available to the public. This section describes other related activities (past, present or reasonably foreseeable future actions), their interrelationships, and cumulative impacts. It may include such items as action by the community or citizen groups pertinent to the proposed action, or any other unique factors associated with the action. (See paragraph 405e for other factors that may be included in the affected environment discussion.)

**506g. Environmental Consequences.**

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

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

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

#### **506h. Mitigation.**

(1) An EIS describes mitigation measures considered or planned to minimize harm from the proposed action. The following types of mitigation measures will be considered: design and construction actions to avoid or reduce impacts; design measures that reduce impacts; management actions that reduce impacts during operation of the facility; and replacement, restoration (reuse, conservation, preservation, etc.), and compensation measures. If FAA has experience with an environmental management system (EMS) that was used to monitor the implementation of mitigation, that experience should be considered, where applicable, in the assessment of appropriate mitigation measures.

(2) An EIS specifies mitigation measures that the FAA has decided to include as part of the proposed action. Mitigation and other conditions established in the EIS, or during its review of the EIS, and committed to in the ROD, will be implemented by the lead agency or other appropriate consenting agency. The FAA ensures implementation of such mitigation measures through special conditions, funding agreements, contract specifications, directives, other review or implementation procedures, and other appropriate follow-up actions in accordance with 40 CFR 1505.3. Monitoring or other follow-up review should be described in the EIS, and should allow verification of the mitigation effectiveness. See paragraph 404g for additional information.

**506i. List of Preparers.** This list includes the names, and qualifications (e.g., expertise, experience, professional disciplines) of the FAA staff that were primarily responsible for preparing the EIS or significant background material, and contractors who assisted in preparing the EIS or associated environmental studies.

**506j. List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent.** This list is included for reference and to demonstrate that the EIS is being circulated, and thus, that the public review process is being followed.

**506k. Index.** The index reflects the key terms used throughout the EIS for easy reference. The index includes page numbers for each reference.

**506l. Appendices (if any).** This section consists of material that substantiates any analysis that is fundamental to the EIS, but would substantially contribute to the length of the EIS or detract from the document readability, if included in the body of the EIS. This section should contain information about formal and informal consultation conducted, and related agreement documents prepared, pursuant to other applicable environmental laws, regulations, and executive orders.

**506m. Comments.** Comments received on the DEIS are assessed and responded to in the FEIS in any or all of the following ways:

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

**506n. Footnotes.** Footnotes include title, author, date of document, page(s) relied upon, and footnote number used to identify where in the text, figures, and charts of the EIS the source is used.

**Figure 5-3. Environmental Impact Statement Content**

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

**507. TIMING OF ACTIONS.**

**507a.** The required comment period for a DEIS is a minimum of 45 days (40 CFR 1506.10(c)). No final decision on the proposed action can be made or recorded in a ROD until 90 days after the filing of the DEIS (40 CFR 1506.10(b)(1)). There is a 30-day waiting period after the filing of a FEIS. However, if the FEIS is filed within the 90-day waiting period after the filing of the DEIS, a decision cannot be made until both the 30-day and 90-day requirements have been met. When the FAA is the lead Federal agency, EPA, upon a showing by another Federal agency of compelling reasons of national policy, may extend the 30-day and 45-day periods for up to 30 days, but no longer than 30 days without the permission of the FAA. However, the 90-day waiting period after filing the DEIS cannot be altered by EPA. As part of the EIS filing process, EPA publishes the official Federal Register notice of availability for an

EIS. FAA may also publish a more detailed availability notice in the *Federal Register*, but the FAA notice cannot be used on its own. Additionally, if FAA unilaterally approves an overall extension of its public comment period, EPA shall be notified so that EPA may modify its *Federal Register* notice accordingly. In the event of an emergency, the responsible FAA official must follow the procedures outlined in paragraph 302. For legislative proposals, refer to paragraph 519.

**507b.** Send five (printed) copies to:

U.S. Environmental Protection Agency, Office of Federal Activities,  
EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, Room 7241,  
1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. (Special NOTE: For all deliveries by courier, including express delivery services other than the US Postal Service, use 20004 as the zip code.) The responsible FAA official should access the "NEPA" website of the EPA's Office of Federal Activities to verify that the filing instructions provided herein are current (<http://www.epa.gov/compliance/nepa/>).

**508. DRAFT EIS.** A DEIS is prepared using the format outlined in paragraph 506.

**508a. Internal Review.** The responsible FAA official should plan for internal review of DEIS's. For DEIS's originating in the regions, the preliminary DEIS or its relevant parts will be reviewed by affected regional program division service director or their designee and Regional Counsel before publication, distribution, and filing the DEIS with EPA for public review. For DEIS's originating in headquarters, have national interest, or involve 4(f) determinations, the preliminary DEIS will be reviewed by AGC. Internal review is to assure that DEIS's are technically and legally sufficient. Internal review is intended to assure that the concerns of other FAA offices and any related foreseeable agency actions by other FAA offices are properly discussed in the DEIS. Further, internal review is intended to assure that any commitments that are the responsibility of other FAA offices are coordinated with the appropriate action office so that these commitments will be implemented.

**508b. Filing with EPA.** The responsible FAA official files the DEIS with the EPA (40 CFR 1506.9). See paragraph 507.

**508c. Public Notice.** The responsible FAA official shall ensure that the FAA-prepared DEIS is sent to interested parties, libraries, and other public venues to provide the public the opportunity to review and comment on the DEIS (paragraphs 507a and b).

(1) Immediately following that distribution, the official shall file the five copies accompanied by a letter to EPA certifying that FAA has distributed the DEIS for public review and comment. EPA will normally publish notice of the DEIS's availability (NOA) in the *Federal Register* two weeks after receiving FAA's certification of distribution, but the official is encouraged to contact AGC-200 for the exact date that EPA will publish that NOA.

(2) To ensure that local notices of the DEIS's availability occur on the same date that EPA publishes the NOA in the *Federal Register*, the responsible FAA official shall send a press

release to local media and other appropriate media. The release should request the media to publish a notice of the DEIS's availability on the same date that EPA is expected to publish its notice. The local notice of availability of the DEIS shall provide the same due date for comments as that specified in the *Federal Register* notice.

(3) The official should use the following standard language in its certification to EPA and press releases announcing the DEIS's availability for comment and any public hearing(s) associated with the proposed project that will occur:

FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EIS. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewer's interests and concerns using quotations and other specific references to the text of the Draft EIS and related documents. Matters that could have been raised with specificity during the comment period on the Draft EIS may not be considered if they are raised for the first time later in the decision process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

#### **508d. Distribution and Coordination for Intergovernmental Review.**

(1) According to CEQ regulations, comments on the DEIS shall be obtained from or requested of appropriate Federal, State, and local agencies, and Tribes (40 CFR 1501.2(d)(2) and 1501.7(a)(1)), and from Tribes when the effects may be on a reservation or affect Tribal interests (40 CFR 1502.16(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii)). A Federal agency may include State or local governments, or Tribes which have assumed NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974 (40 CFR 1508.12). All DEIS's will be coordinated with the appropriate regional offices of other Federal agencies having jurisdiction by law or special expertise. However, DEIS's that are coordinated with any component of the Department of the Interior (DOI), Department of Commerce (DOC), or Department of Energy (DOE) will be coordinated with the Washington, D.C., headquarters of those departments. Coordination with the DOE is necessary only for transportation proposals having major energy-related consequences. See paragraph 213 for additional information on interagency and intergovernmental review of EIS's.

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

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

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

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

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

(e) State and local agencies and Tribes (see paragraph 213 on intergovernmental and interagency coordination and consultation), including cooperating agencies, agencies that commented substantively on the Intergovernmental Review of Federal Programs, the Advisory Council on Historic Preservation for actions using 106 process, affected cities and counties, and others known to have an interest in the action (see paragraph 208 on public involvement). For example, various laws, regulations, and executive orders in addition to NEPA, may also require coordination with Tribes that are not Federally recognized, and with traditional cultural leaders. Consult with AEE, AGC, and the Office of Civil Rights (ACR) and see Appendix A, especially section 11 on cultural resources, for more information.

(f) EPA regional office of interest (one copy).

**508e. Copies.** Copies should be printed by the responsible FAA official in sufficient quantities to meet anticipated demand for the DEIS. A fee, not to exceed reproduction costs, may be charged for copies requested by the public if the original set of copies is exhausted. The DEIS should be available at local libraries or similar public depositories having extended office hours to facilitate accessibility. Material used in developing or referenced in the DEIS must be available for review at the appropriate FAA office(s) or at a designated location. The distribution may be supplemented as appropriate with copies in digital form (e.g., CDROM) and may be placed on the internet to facilitate public awareness and access to the DEIS.

**508f. Comment Period.** See paragraph 507.

**508g. Comments.** The responsible FAA official must take into consideration all comments received from the public and respond to the substantive comments in the FEIS, as discussed in paragraph 506m. Any comments on the DEIS from the public, including comments made during public hearings (see paragraph 209), will accompany the FEIS through the normal internal review process. In preparing the FEIS, the DEIS will be revised, as appropriate, to reflect comments received, issues raised through the community involvement and public hearing process, or other considerations. Copies of all substantive comment will be included in the FEIS or as a separate, accompanying appendix. If the number of comments is too voluminous to include, the comments may be summarized. Relevant environmental documents, comments, and responses



are part of the agency's public record and will be made available to the public through appropriate regional office procedures.

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

**509a.** Internal review is coordinated as follows:

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

**(2) FEIS's originating in the field, and not subject to headquarters' concurrence.** The Regional Administrator or Center Director, or designee, shall approve and file the FEIS with EPA, following review for legal sufficiency by the Regional Counsel. (see paragraph 507)

**(3) FEIS's originating in regions or centers, but when headquarters concurrence is requested.** The Regional Administrator or Center Director, or designee, shall approve the FEIS and submit it to the appropriate service or office director. Following approval, the FEIS will be filed with EPA (see paragraph 507).

**(4) FEIS's originating in regions or centers, but where authority to approve the FEIS is retained in headquarters.** The applicable division manager or center shall send the proposed FEIS to the appropriate headquarters' office or service director. The office or service director will provide the FEIS to AGC review. The office or service director will provide a copy of the FEIS to AEE for information unless review is specifically requested. Following approval, the FEIS will be filed with EPA. Presently, approval for these types of FEIS's is being delegated, if comments on the DEIS have been incorporated. (see paragraph 507)

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

**(6) Highly controversial FEIS's requiring headquarters' review and concurrence.**

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

**509b. FEIS approval.**

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

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

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

(2) Signature and date blocks will be provided for the decisionmaker's approval and may also be provided for the concurrences of other appropriate offices.

**510. NOTICE OF AVAILABILITY OF FEIS.** The FAA can make a final decision to act no sooner than 30 days after the EPA notice of availability is published in the *Federal Register* (40 CFR 1506.10). When the FAA is the lead Federal agency, EPA, upon a showing by another Federal Agency of compelling reasons of national policy, may extend prescribed periods up to 30 days, but no longer than 30 days without the permission of the FAA. The responsible FAA official may also extend the waiting period or, with the approval of P-1, request EPA to reduce this period for compelling reasons of national policy (40 CFR 1506.10(d)). If FAA unilaterally approves an overall extension of the comment period, EPA shall be notified so that EPA may modify its *Federal Register* notice accordingly. The purpose for this waiting period is to provide for any pre-decision referral process for resolving interagency disagreements (40 CFR 1504.3). (see paragraph 517). The purpose is not for receiving and incorporating public comments. At the conclusion of the waiting period, the decisionmaker issues the final decision in a ROD (see paragraph 514) and may begin implementing the proposed action.

**511. DISTRIBUTION OF APPROVED FEIS.** The originating FAA region, center or service simultaneously distributes the approved FEIS as follows:

**511a.** Five copies to the appropriate regional office of EPA (one copy, if categorized by the EPA as "Lack of Objections" (LO-1)).

**511b.** One copy of the FEIS to each of the following: the originating FAA office director; Regional FAA Administrator; and AEE.

**511c.** One copy of the approved FEIS will be sent to the DOT Office of the Assistant Secretary for Transportation Policy, Office of Transportation Policy Development (P-100).

**511d.** A copy of the FEIS also will be sent to:

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

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

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

**511e.** Adequate number of copies (varies by State) to the appropriate State-designated single point of contact (or specific agency contacts when States have not designated a single contact point), unless otherwise designated by the governor.

**511f.** Additional copies will be sent to accessible locations to be made available to the general public, including headquarters and regional offices; and State, metropolitan, and local public libraries to facilitate accessibility.

**511g.** FEIS's, comments received, and supporting documents will be made available to the public without charge to the fullest extent practical or at a reduced charge, which is not more than the actual cost of reproducing copies, at appropriate agency office(s) or at a designated location.

**512. RECORD OF DECISION (ROD).** Following the time periods described in 40 CFR 1506.10 (i.e., 90 days from DEIS Notice of Availability (NOA) issuance and 30 day waiting period for FEIS NOA issuance), the agency's decisionmaker may make a decision on the Federal action. The ROD presents the agency's decision on the actions, identifies all alternatives considered by the agency, specifying which alternatives were considered to be environmentally preferable, identifies applicable mitigation and monitoring actions required, and as necessary, can be used to clarify and respond to issues raised on the FEIS. The ROD may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. The ROD shall identify and discuss all factors including any essential considerations of national policies that were balanced by the agency in making its decision and state how those considerations entered into the decision. The ROD shall state whether all practicable means to avoid or minimize environmental harm from the alternatives selected have been adopted, and if not adopted, why they were not adopted. The draft ROD should accompany the proposed FEIS during the internal review prior to approval only when headquarters' concurrence is required. The decisionmaker must obtain concurrence before approving the ROD. After approving the

ROD, the decisionmaker may begin implementing the selected action. Figure 5-4, Record of Decision Overview, presents an overview of the components of a ROD.

**Figure 5-4. Record of Decision Overview**

<b>Purpose</b>	<ul style="list-style-type: none"> <li>Announces the FAA's decision regarding the proposed major action.</li> </ul>
<b>Scope</b>	<ul style="list-style-type: none"> <li>States the FAA's decision and the basis for the decision.</li> <li>Summarizes the FEIS analyses and selected mitigation measures.</li> </ul>
<b>Content</b>	<ul style="list-style-type: none"> <li>States the FAA's preferred alternative.</li> <li>Identifies all alternatives considered by the FAA.</li> <li>States whether all practicable means to avoid or minimize harm to the environment were considered, and if not, explains why.</li> <li>Explains, when appropriate, the mitigation implementation responsibilities.</li> <li>Makes appropriate findings required by executive order, regulation, or law (e.g., 4(f), wetlands, etc.).</li> </ul>
<b>Public Participation</b>	<ul style="list-style-type: none"> <li>No public participation; however, notice of the decision is provided to the public.</li> </ul>

**512a.** Regional Administrators are responsible for signing ROD's where proposed actions cross regional or program lines. The lead regional operating division responsible for preparing and approving the FEIS will make this determination, obtain regional counsel review, and facilitate signature by the appropriate decisionmaker. Subject to program-specific procedures for NEPA compliance, the division manager is responsible for signing ROD's that do not cross regional or program lines.

**512b.** Any mitigation measure that was made a condition of the approval of the FEIS must be included in the ROD. ROD's can set forth the conditions for the action approval and state mitigation measures that will be taken. A monitoring and enforcement program shall be adopted and summarized where applicable for any such mitigation. Proposed changes in or deletions of mitigation measures that were a condition of approval of the FEIS must be reviewed by the same agency offices that reviewed the FEIS and must be approved by the FEIS approving official.

**512c.** The decisionmaker may choose to take an action that was included within the range of alternatives of an approved FEIS but was neither the environmentally preferred alternative(s) nor the agency's preferred alternative as identified in the FEIS. In these cases, the decisionmaker must circulate the revised draft ROD for internal coordination and concurrence with the same FAA offices that reviewed the FEIS. These offices may concur without comment, may concur on the condition that specific mitigation measures be incorporated in the ROD, may request that a supplement to the FEIS be prepared and circulated, or may non-concur. The decisionmaker cannot approve the Federal action over a non-concurrence.

**512d.** If the decisionmaker selects an alternative other than the preferred alternative in the FEIS that involves other environmental laws, regulations, or executive orders, such as those related to section 4(f) land, Federally listed endangered species, wetlands, or historic sites, the

agency must first complete any required evaluation and consultation not already completed and make the appropriate finding prior to taking the action. Supplements to FEIS's may be necessary and will be reviewed and approved in the same manner as the original document, and a new draft ROD should be prepared, circulated, and approved. A copy of the ROD should be forwarded with the FEIS to AEE-1 for their files.

**512e.** Although the CEQ regulations do not require publication of a notice of availability of the ROD in the Federal Register except for actions of national concern, the ROD must be made available to the public pursuant to 40 CFR 1506.6(b) (see question 34a of CEQ's "40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR 1500-1508)," 46 FR 18026, March 23, 1981). The responsible FAA official may publish a notice of a ROD in the Federal Register for actions not of national concern. Additional information on public involvement may be found in paragraph 208, and by contacting AEE (Environment & Energy Team, AEE-200) and AGC-600.

**513. TIERING AND PROGRAMMATIC EIS's.** Program offices are encouraged to build upon prior, broad EA's or EIS's (see paragraph 500d(4)) and incorporate FAA experience in the assessment, implementation, and monitoring of NEPA decisions, where applicable. For example, long-term developmental EIS's and broad system, program, or regional EIS's may be incorporated by specific cross-references in support of project-specific EIS's. The purpose of tiering is to eliminate repetition and facilitate analysis of issues at the appropriate level of detail. Programmatic EIS's are tailored to particular program needs and, in practice, only need to be used to assist a program in environmental documentation vis-a-vis site- or action-specific documentation (see 40 CFR 1502.20 and 1508.28 and paragraph 409). Tiered and programmatic EIS's are prepared, circulated and filed using the same procedures for DEIS's and FEIS's as specified in this chapter.

**514. TIME LIMITS FOR EIS's.** The time limits established for all FAA EIS's, except for programmatic EIS's, are contained in this paragraph.

**514a.** A DEIS may be assumed valid for a period of three years. If the proposed FEIS is not submitted to the approving official within three years from the date of the DEIS circulation, a written reevaluation of the draft will be prepared by the responsible FAA official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the DEIS remain applicable, accurate, and valid. If there have been changes in these factors that would be significant in the consideration of the proposal, a supplement to the DEIS or a new DEIS will be prepared and circulated.

**514b.** For approved FEIS's, two sets of conditions have been established:

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

anticipated impacts, or proposed mitigation measures, a new or supplemental FEIS will be prepared and circulated.

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

#### **515. WRITTEN REEVALUATION.**

**515a.** The preparation of a new EIS is not necessary when it can be documented that the:

(1) Proposed action conforms to plans or projects for which a prior EIS has been filed and there are no substantial changes in the proposed action that are relevant to environmental concerns;

(2) Data and analyses contained in the previous EIS are still substantially valid and there are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; and

(3) Pertinent conditions and requirements (all) of the prior approval have, or will be, met in the current action.

**515b.** This evaluation, signed by the responsible FAA official, will either conclude the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new EIS.

**515c.** The written re-evaluation should be reviewed internally and may be made public at the discretion of the responsible FAA official.

#### **516. REVISED OR SUPPLEMENTAL EIS's.**

**516a.** The agency prepares supplements to either DEIS's or FEIS's if the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Significant information is information that paints a dramatically different picture of impacts compared to the description of impacts in the EIS. The agency also may prepare supplements when the purposes of NEPA will be furthered by doing so.

**516b.** The agency prepares, circulates, and files a supplement to a DEIS or FEIS in the same fashion as the original DEIS or FEIS, unless alternative procedures are approved by the CEQ. If, however, there are compelling reasons of national policy to shorten time periods, the agency must consult with EPA (see paragraph 510). Scoping should be considered, but is not required.

**516c.** The preparation of a new EIS is not necessary if conditions in paragraph 515 are met. If a supplement changes a ROD, a new ROD should be issued after the supplement has been reviewed for 30 days.

#### **517. REFERRALS TO COUNCIL ON ENVIRONMENTAL QUALITY.**

**517a.** The CEQ may serve as a mediator in interagency disagreements over proposed FAA actions that might cause unsatisfactory environmental effects. If a commenting agency determines that an proposed FAA action is environmentally unsatisfactory, the commenting agency may refer the matter to CEQ by delivering the referral to CEQ no later than 25 days after publication by EPA of notice that the final EIS is available (unless the FAA grants an extension of time under 14 CFR 1504.3(b)). Procedures for referrals and response to referrals are outlined in the CEQ regulations at 40 CFR 1504.3.

**517b.** When the responsible FAA official receives a notice of intended referral from the commenting agency, the responsible FAA official will provide P-1 (the Office of the Assistant Secretary for Transportation Policy) and AEE with a copy of the notice. (Airports personnel will alert APP-600 if a referral notice is received.)

**517c.** In the event of referral to CEQ by a commenting agency, the responsible FAA official forwards a proposed response to AEE within 10 days of referral. The response must address fully the issues raised in the referral and be supported by evidence. AEE will obtain P-1's concurrence on the proposed response. (APP-600 also will obtain P-1 concurrence for airports' actions). The response then will be sent to CEQ within 25 days of the referral.

**518. REVIEW AND ADOPTION OF ENVIRONMENTAL IMPACT STATEMENTS PREPARED BY OTHER AGENCIES.** Other Federal, State, or local agencies, or Tribe, may consult the FAA for assistance in analyzing environmental impacts that fall within FAA's functional area of responsibility. The FAA should provide its expertise on proposals affecting aviation and other FAA responsibilities as follows:

**518a.** Comments will be specific in nature and organized in a manner consistent with the structure of the draft EIS and may identify alternatives or modifications that might enhance environmental quality or avoid or minimize adverse environmental impacts, and will correct inaccuracies or omissions.

**518b.** Any agency project that is environmentally or functionally related to the proposed action in the EIS should be identified so that inter-relationships can be discussed in the EIS. In such cases, the agency should consider serving as a joint lead agency or cooperating agency.

**518c.** Environmental monitoring for which the agency has special expertise may be suggested and encouraged during construction, startup, or operation phases.

**518d.** Other agencies will generally be requested to forward their DEIS's directly to the appropriate FAA regional offices. The following types of matters, however, will be referred to

appropriate office or service in the Washington headquarters for comment: actions with national policy implications; proposed actions that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance; legislation; or regulations having national impacts, or national program proposals. DEIS's in these categories must also be referred to P-1 for preparation of DOT comments. In referring these matters to headquarters, the regional office is encouraged to prepare a proposed Departmental response.

**518e.** Regional offices review DEIS's that do not have national implications. Comments will be forwarded directly to the office that the originating agency designates for receipt of comments. If the FAA receiving office believes that another DOT office also has an interest or is in a better position to respond, the FAA office should transmit the DEIS to the appropriate DOT office in a timely fashion. If the FAA and other DOT administrations comment at the regional level, the Regional Administrator or designee may coordinate the comments.

**518f.** When appropriate, the FAA will coordinate a response with DOT offices having special expertise in the subject matter.

**518g.** Comments will be submitted within the time limits set forth in the request, unless the office responsible for submitting comments seeks and receives an extension of time. Comments must be concise and specify any changes desired either in the action proposed and/or in the environmental statement.

**518h.** FAA may adopt, in whole or in part, draft or final EIS's prepared by other agencies (see 40 CFR 1506.3). When the FAA adopts an EIS in whole or in part, the responsible FAA official must independently evaluate the information contained in the EIS, take full responsibility for scope and content that addresses FAA actions, issue its own ROD, and provide notification to EPA that FAA has adopted the EIS. In the ROD, the responsible FAA official may also summarize the adopted portions followed by a direct reference to the EIS. If more than three years have elapsed since the EIS was issued, the responsible FAA official should prepare a written re-evaluation of the EIS (see paragraph 515). Pursuant to 40 CFR 1503.3, if the responsible FAA official does not accept an EIS prepared by another agency, the responsible FAA official shall specify in its comments to that agency whether it (FAA) needs any additional information or describe the mitigation measures the FAA considers necessary to grant or approve an applicable permit, license, or related requirements or concurrences. If the responsible FAA official comments on the action agency's predictive methodology, the responsible FAA official should describe the preferred alternative methodology and explain why the FAA prefers this methodology.

**519. LEGISLATIVE PROPOSALS.** The FAA must, at minimum, prepare and circulate a draft legislative environmental impact statement (LEIS) for a legislative proposal that could cause significant environmental impacts (40 CFR 1506.8; also see 40 CFR 1508.17, 1508.18(a)). Unless a final LEIS is required under 40 CFR 15068(b)(2), the draft LEIS along with comments received from circulation of the draft LEIS are included in the formal transmittal of the legislative package to Congress. The draft LEIS (un-revised) and associated comments constitute the detailed statement required by statute for legislative proposals to Congress. The office



originating the legislation is responsible for preparing, circulating and filing the draft LEIS and, if required, the final LEIS. (see paragraph 508). The LEIS is prepared and processed in the same manner as an EIS except that scoping is not required (40 CFR 1506.8(b)(1)).

**519a.** The draft LEIS and any public comments received by the FAA, and the final LEIS if required, must be transmitted to Congress within 30 days after transmittal of the legislative proposal, or within sufficient time to allow review for associated hearings and debates on the proposed legislation. The responsible FAA office must clear the draft LEIS and associated comments, and the final LEIS if required, with P-1 and DOT Assistant General Counsel for Legislation (C-40). C-40 will submit the environmental documents to the Office of Management and Budget for circulation in the normal legislative clearance process.

**519b.** Questions concerning legislation should be directed to FAA's Office of Government and Industry (AGI).

**520. REGULATIONS.** For regulations subject to an EA or EIS, the DEIS, draft EA, or EA/FONSI shall be prepared and normally accompany the proposed rule. The EA shall be issued for public comment to the extent practicable (see 40 CFR 1501.4(b)). The Notice of Availability of the DEIS must be published at least 90 days or the Notice of Availability of the FEIS must be published at least 30 days, whichever is later, prior to publishing a final rule. The FAA may waive the 30 day period and publish a final rule concurrently with a NOA of the FEIS when engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting public health or safety (see 40 CFR §1506.10(b)(2)). When the DEIS or EA is issued for public comment, copies will be made available for public review in Dockets (AGC-200). Dockets (AGC-200) will also have and make available copies of any EA/FONSI that is issued.

## **521. ENVIRONMENTAL EFFECTS OF MAJOR FAA ACTIONS ABROAD.**

**521a.** In accordance with E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (44 FR 1957, January 4, 1979) responsible FAA officials should determine whether certain FAA actions may have a significant effect outside the United States, its territories and possessions. FAA officials should consider whether the federal action involves:

(1) Effects on the environment of the global commons outside the jurisdiction of any nation (e.g., the ocean or Antarctica).

(2) Effects on the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(3) Provision of certain products (or emissions/effluents) which in the United States are strictly prohibited or strictly regulated because their effects on the environment present a serious public health risk;

(4) A physical project which, in the U.S., would be prohibited or strictly regulated by Federal law to protect the environment against radioactive substances; or

(5) Effects on natural or ecological resources of global importance designated for protection by the President or resources protected by international agreement binding on the United States designated for protection by the Secretary of State.

**521b.** Before deciding to approve any action having potential effects in the categories described in 521a, the responsible FAA official shall determine whether the proposed action may have a significant environmental effect abroad.

**521c.** If the responsible FAA official determines that the action will not have a significant environmental effect abroad, he or she shall prepare a memorandum for the record which states the underlying reasons for the determination.

**521d.** If the responsible FAA official determines that the action may have a significant effect abroad, he or she shall determine what type of document must be prepared and considered in accordance with E.O. 12114. As determined by the agency, documents shall be taken into consideration in taking actions as follows:

(1) For major FAA actions significantly affecting the global commons -- an environmental impact statement (including generic, program, and specific statements);

(2) For major federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action or major Federal actions significantly affecting the environment of a foreign nation which provide to that nation products or physical projects as described in 521a(3) or 521a(4):

(a) Bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(b) A concise review of the environmental issues involved, including environmental assessments, summary environmental analyses, or other appropriate documents; and

(3) For major Federal actions outside the U.S., its territories and possessions which significantly affect natural or ecologically resources of global importance or protected by international agreements as set forth in 521a(5) -- an EIS, bilateral or multilateral environmental studies, or a concise review of environmental issues.

**521e.** An agency need not prepare a new document to comply with E.O. 12114 when a document described in 521d already exists.

**521f.** The responsible FAA official shall coordinate communications concerning environmental studies or documentation with the State Department through the DOT Office of Transportation Policy Development (P-100).

**521g.** With respect to requests for FAA action, after the State Department's notification, all FAA requests to a foreign applicant for information, which the FAA needs to prepare an environmental study or an EIS, should then be forwarded through the civil aviation authority of the applicant's government. Copies of the EIS and notices of any public hearings planned on the proposed action should be furnished to the:

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

**521h.** Other environmental laws, regulations, and executive orders have specific requirements regarding consideration of potential effects of Federal actions overseas (see Appendix A). Important examples include, but are not limited to, the following:

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

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

**521i.** Any substantial differences arising in the course of the EIS between the originating FAA organization and a foreign applicant or the affected foreign country should be referred to AEE (for proposed Airport actions, APP-600), which will consult with the Assistant Administrator for Environment and Policy (AEP) and the Assistant Administrator for International Aviation (API) to resolve any problems.

**522. LIMITATION ON ACTIONS SUBJECT TO NEPA.** For actions subject to an EIS the responsible FAA official shall not take any action or make any irretrievable and irreversible commitments of resources until appropriate environmental review has been completed under this order (see 40 CFR 1502.2(f) and 1502.4(c)(3)). CEQ regulations (see 40 CFR 1506.1) specifically require that:

**522a** For projects requiring an EIS, no action concerning the proposal shall be taken which would have an adverse environmental impact or limit the choice of reasonable alternatives, unless the action is justified independently of the program, is itself accompanied by an adequate EIS, and will not prejudice the ultimate decision on the program.

**522b.** Further, if the FAA is considering an application from a non-Federal entity, and FAA is aware that the applicant is about to take an action within the agency's jurisdiction that would have an adverse environmental impact or limit the choice of reasonable alternatives, the responsible FAA official shall promptly notify the applicant that the FAA will take appropriate action to insure that the objectives and procedures of NEPA are achieved. However, this does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for federal, state, or local permits or assistance.

**523.-599. RESERVED.**

## APPENDIX A. ANALYSIS OF ENVIRONMENTAL IMPACT CATEGORIES

### *SECTION 1. BACKGROUND AND HOW TO USE THIS APPENDIX*

**1.1** This appendix summarizes the requirements and procedures to be used in environmental impact analysis according to resource impact category. Executive Orders, FAA and DOT Orders, and Memoranda & Guidance documents described in Appendix C may also contain requirements that apply.

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

<i>section</i>	<i>Impact Categories</i>	<i>page</i>
2	<i>Air Quality</i>	A-3
3	<i>Coastal Resources</i>	A-10
4	<i>Compatible Land Use</i>	A-13
5	<i>Construction Impacts</i>	A-18
6	<i>Department of Transportation Act: Sec. 4(f)</i>	A-19
7	<i>Farmlands</i>	A-23
8	<i>Fish, Wildlife, and Plants</i>	A-25
9	<i>Floodplains</i>	A-32
10	<i>Hazardous Materials, Pollution Prevention, and Solid Waste</i>	A-35
11	<i>Historical, Architectural, Archeological, and Cultural Resources</i>	A-41
12	<i>Light Emissions and Visual Impacts</i>	A-56
13	<i>Natural Resources and Energy Supply</i>	A-58
14	<i>Noise</i>	A-60
15	<i>Secondary (Induced) Impacts</i>	A-68
16	<i>Socioeconomic Impacts, Environmental Justice, and Children's Environmental Health and Safety Risks</i>	A-69
17	<i>Water Quality</i>	A-74
18	<i>Wetlands</i>	A-77
19	<i>Wild and Scenic Rivers</i>	A-81

**1.3** To effectively use this appendix, first become familiar with the material contained in each impact area. Within each impact area, the overview box highlights major applicable Federal statute(s), regulations, executive orders, and guidance and the oversight agencies. Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, is addressed in this appendix in section 16 and in Appendix C. Since environmental justice is defined as any disproportionately high and adverse impact on minority populations and low-income populations, this E.O. applies to other impact categories where appropriate. Similarly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, is addressed in this appendix in section 16 and applies to other impact categories where appropriate. Executive Order 13148 of April 21, 2000

“Greening the Government Through Leadership in Environmental Management” requires Federal agencies to use an EMS approach for improving environmental performance. Where EMS's have been implemented, they may assist in the evaluation of environmental impacts. In those cases, the NEPA and EMS processes should be complementary.

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

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

**1.6** Once the standards and relationship of the requirements to the project are understood, the thresholds for significant adverse effect should be reviewed. This section summarizes the impact threshold used by the FAA to determine significance of the effects of the proposed action where such thresholds have been established. For example, the FAA has issued guidance in determining the scope and context of potential noise impacts, and thus, whether noise increases are significant and require preparation of an EIS.

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

**1.8** Within each applicable impact category, alternative mitigation measures are identified.

### ***SECTION 2. AIR QUALITY***

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Clean Air Act (CAA), as amended [42 United States Code (U.S.C.) 7401-7671] [Public Law (PL) 91-604, PL 101-549]	Title 40 Code of Federal Regulations (CFR) parts 9, 50-53, 60, 61, 66, 67, 81, 82, and 93 (which includes General Conformity)	Environmental Protection Agency

## **2.1 Requirements.**

**2.1a.** Two primary laws apply to air quality: NEPA, and the Clean Air Act (CAA). As a Federal agency, the FAA is required under NEPA to prepare an environmental document (e.g., environmental impact statement (EIS) or environmental assessment (EA)) for major Federal

actions that have the potential to affect the quality including air quality of the human environment. An air quality assessment prepared for inclusion in a NEPA environmental document should include an analysis and conclusions of a proposed action's impacts on air quality.

**2.1b.** The CAA established National Ambient Air Quality Standards (NAAQS) for six pollutants, termed "criteria pollutants." The six pollutants are: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone (O<sub>3</sub>), particulate matter (PM-10 and PM-2.5), and sulfur dioxide (SO<sub>2</sub>). The CAA requires each State to adopt a plan to achieve the NAAQS for each pollutant within timeframes established under the CAA. These air quality plans, known as State implementation plans (SIP), are subject to Environmental Protection Agency (EPA) approval. In default of an approved SIP, the EPA is required to promulgate a Federal implementation plan (FIP).

**2.1c.** When a NEPA analysis is needed, the proposed action's impact on air quality is assessed by evaluating the impact of the proposed action on the NAAQS. The proposed action's "build" and "no-build" emissions are inventoried for each reasonable alternative. The inventory should include both direct and indirect emissions that are reasonably foreseeable. Normally, further analysis would not be required for pollutants where emissions do not exceed general conformity thresholds. However, based on the nature of the project and consultation with State and local air quality agencies additional analysis may be deemed appropriate, such as that required for cumulative impacts. If there are any questions about whether additional analysis is reasonable, contact the appropriate headquarters office and the Office of Environment and Energy. If required, the emissions for the proposed action then are translated into pollutant concentrations using a dispersion model. Depending on the project, this step can be data and computation intensive. Once dispersion modeling has been performed, pollutant concentrations are combined with background pollutant concentrations and compared to the NAAQS. If modeled concentrations do not result in projected exceedances of the NAAQS, then the analysis is complete. If concentrations exceed the NAAQS, emissions must be mitigated or offset, or the action redesigned to reduce emissions.

**2.1d.** In addition to NEPA, General Conformity, and grant funding requirements, there may be State and local air quality requirements to consider. These requirements can include, but are not limited to, provisions such as State indirect source regulations and State air quality standards.

**2.1e.** Section 176(c) of the CAA, as amended in 1990, requires that Federal actions conform to the appropriate Federal or State air quality plans (FIP's or SIP's) in order to attain the CAA's air quality goals. Section 176(c) states:

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

**2.1f.** Conformity is defined as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such Federal activities will not:

- (1). Cause or contribute to any new violation of any standard in any area.
- (2). Increase the frequency or severity of any existing violation of any standard in any area.
- (3). Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

**2.1g.** The CAA 1990 Amendments required the EPA to issue rules that would ensure Federal actions conform to the appropriate FIP or SIP. A final rule for determining conformity of general Federal actions (40 CFR part 93, subpart B) was published in the *Federal Register* (FR) on November 30, 1993, and became effective January 31, 1994. In addition, 40 CFR part 51, subpart W specifies requirements for conformity which States must include in their respective SIP's. Once a SIP conformity provision has been approved by EPA, the State conformity requirements included in the SIP apply. EPA issued separate rules addressing conformity of highway, roadway, and transit plans and projects (40 CFR part 93, subpart A, and 40 CFR part 51, subpart T) on November 15, 1993. The remaining conformity discussion addresses only General Conformity since FAA actions are subject to this rule, although projects involving airport access may also be subject to some provisions of Transportation Conformity.

**2.1h.** The General Conformity Rule establishes the procedures and criteria for determining whether certain Federal actions conform to State or EPA (Federal) air quality implementation plans. To determine whether conformity requirements apply to a proposed Federal action, the following must be considered: the non-attainment or maintenance status of the area; type of pollutant or emissions; exemptions from conformity and presumptions to conform; the project's emission levels; and the regional significance of the project's emissions. FAA actions are subject to the General Conformity Rule. Projects involving airport access that fall under 23 U.S.C. or the Federal Transit Act may also be subject to some provisions of Transportation Conformity. **2.1i.** General conformity requirements are distinct from NEPA requirements. For example, NEPA may require FAA to analyze several alternatives in detail. If a general conformity determination is required, only the proposed action must be addressed. General conformity, like other environmental requirements, should be integrated into the NEPA process as much as possible. For example, the draft conformity determination should be issued along with any required draft EIS for public comment. While for some decisions there may be valid reasons to address general conformity separately rather than concurrently, when conformity analysis provides information that is essential to a reasoned choice among alternatives then FAA must complete the conformity analysis and issue the final conformity determination prior to completion of a final EIS.

**2.1j.** The General Conformity Rule only applies in areas that EPA has designated non-attainment or maintenance. A non-attainment area is any geographic area of the U.S. that experiences a violation of one or more NAAQS. A maintenance area is any geographic area of



the U.S. previously designated non-attainment for a criteria pollutant pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment.

**2.1k.** The rule covers direct and indirect emissions of criteria pollutants or their precursors from Federal actions that meet the following criteria:

(1) Reasonably foreseeable, and

(2) Can practicably be controlled and maintained by the Federal agency through continuing program responsibility.

**2.1l.** Certain Federal actions are exempt from the requirement of the General Conformity Rule because they result in no emissions or emissions are clearly below the rule's applicability emission threshold levels. These include, but are not limited to:

(1) Continuing and recurring activities such as permit renewals.

(2) Routine maintenance and repair activities.

(3) Routine installation and operation of aviation and maritime navigation aids.

(4) Administrative actions.

(5) Planning studies and provision of technical assistance.

(6) The routine, recurring transportation of materiel and personnel.

(7) Transfers of land, facilities, and real properties.

(8) Actions affecting an existing structure where future activities will be similar in scope to activities currently being conducted.

(9) Enforcement and inspection activities.

(10) Air traffic control activities and adopting approach, departure and en route procedures for air operations.

**2.1m.** The General Conformity Rule provides a provision that permits agencies to develop a list of actions presumed to conform which would be exempt from the requirements of the rule unless regionally significant (discussed below). Notification of such a list and the basis for the presumption of conformity will be published in the *Federal Register*.

**2.1n.** A conformity determination is not required if the emissions caused by the proposed Federal action are not reasonably foreseeable; if the emissions caused by the proposed Federal

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

**2.1o.** In determining whether emission threshold levels are exceeded (and a conformity determination required), agencies must consider direct and indirect emissions. Direct emissions are those that are caused by or initiated by the Federal action and occur at the same time and place as the action. Indirect emissions are those caused by the Federal action, but occur later in time and/or may be removed in distance from the action. Temporary construction emissions must be considered in determining whether emission threshold levels are exceeded. (See EPA General Conformity Questions and Answers, dated November 1994.)

**2.1p.** In addition, the General Conformity Rule adopted the exclusive definition of indirect emissions, which excludes emissions that may be attributable to the Federal action, but that the FAA has no authority to control. The FAA is responsible for assessing only direct and indirect emissions of criteria pollutants and precursors that are caused by a Federal action, are reasonably foreseeable, and can practicably be controlled by the FAA through its continuing program responsibility. The FAA may compare emissions with and without the proposed Federal action during the year in which emissions are projected to be greatest in determining whether emission threshold levels are exceeded.

**2.1q.** If a Federal action does not exceed the threshold levels or is presumed to conform, it may still be subject to a general conformity determination if it has regional significance. If the total of direct and indirect emissions of any pollutant from a Federal action represent 10 percent or more of a maintenance or non-attainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and conformity rules apply. Parts of the overall Federal action that are exempt from conformity requirements (e.g., emission sources covered by New Source Review) should not be included in the analysis. The purpose of the regionally significant requirement is to capture those Federal actions that fall below threshold levels, but have the potential to impact the air quality of a region.

**2.1r.** When it has been determined that a proposed Federal action is not exempt, presumed to conform, exceeds emission threshold levels, or is regionally significant, the agency must prepare a conformity determination based on analysis using criteria stated in EPA's General Conformity Rule (40 CFR part 93 (58 FR 63250, November 30, 1993)).

**2.1s.** A proposed action cannot be approved or initiated unless conformity does not apply or a positive conformity determination is issued (i.e., the action conforms to the SIP). If initial analysis does not indicate a positive conformity determination, alternative actions (including

mitigation measures as part of the action) should be considered and further consultation, analysis, and documentation will be necessary.

## **2.2 FAA RESPONSIBILITIES.**

**2.2a.** The FAA has a responsibility under NEPA to include in its EA or EIS sufficient analysis to disclose the potentially significant impact of a proposed action on the attainment and maintenance of air quality standards established by law or administrative determination.

**2.2b.** It is also the FAA's affirmative responsibility under section 176(c) of the CAA to assure that its actions conform to applicable SIP's. Before the FAA can fund or support in any way any activity, it must address the conformity of the action with the applicable SIP using the criteria and procedures prescribed in the General Conformity Rule or applicable SIP.

**2.2c.** In conducting air quality analysis for purposes of complying with NEPA or conformity, the FAA requires use of the Emissions and Dispersion Modeling System (EDMS) model for aviation sources (aircraft, auxiliary power units, and ground support equipment). The EPA accepted EDMS as a formal EPA preferred guideline model in 1993. An order form for the EDMS software and user's guide can be obtained from the EDMS Internet Site at <http://www.aee.faa.gov/>, or by writing the EDMS Program, Federal Aviation Administration, Office of Environment and Energy (AEE-300), 800 Independence Ave., S.W., Washington, D.C. 20591.

**2.2d.** If the proposed action either will not conform with the SIP or there is potential for the proposed action to cause the area to exceed the NAAQS, then further consultation, analysis, and documentation will be required in an EA or EIS and conformity determination document.

**2.3 SIGNIFICANT IMPACT THRESHOLDS.** Potentially significant air quality impacts associated with an FAA project or action would be demonstrated by the project or action exceeding one or more of the NAAQS for any of the time periods analyzed.

## **2.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**2.4a.** When the analysis indicates potentially significant air quality impacts, it may be necessary to consult further with State or regional air quality officials and/or with EPA. It also is advisable to include such officials in the EIS scoping process to represent cooperating agencies with air quality expertise. These officials will help identify specific analyses needed, alternatives to be considered, or mitigation measures to be incorporated in the action.

**2.4b. Air Quality Assessment Procedures.** NEPA and the CAA Amendments of 1990 have separate requirements and processes; however, their steps can be integrated and combined for efficiency. Also, an air quality analysis can require the coordination of many different agencies. Such coordination and subsequent analysis takes time; therefore, air quality impacts should be addressed as early as practicable when preparing an EA or EIS. For more detailed guidance on air quality procedures see the FAA's report "Air Quality Procedures for Civilian Airports and Air Force Bases."

**2.4c. Modeling Requirements.** The EDMS is FAA's required methodology for performing air quality analysis modeling for aviation sources. EDMS also offers the capability to model other airport emission sources that are not aviation-specific, such as power plants, fuel storage tanks, and ground access vehicles.

**2.4d.** Except for air toxics or where advance written approval has been granted to use an equivalent methodology and computer model by the FAA Office of Environment and Energy, the air quality analyses for aviation emission sources from airport and FAA proposed projects conducted to satisfy NEPA, general conformity, and 49 USC 47106(c) requirements under the Clean Air Act Amendments of 1990 (as amended) must be prepared using the most recent EDMS model available at the start of the environmental analysis process. In the event that EDMS is updated after the environmental analysis process is underway, the updated version of EDMS may be used to provide additional disclosure concerning air quality but use is not required. A complete description of all inputs, particularly the specification of non-default data, should be included in the documentation of the air quality analysis. Users also must provide one copy of EDMS input files used in the analysis and the corresponding output files to the responsible FAA official on magnetic media specified by the FAA official.

**2.4e.** If air toxics analysis is performed, EDMS should be used or supplemented with other air toxic methodology and models in consultation with the appropriate FAA program office and AEE.

**2.4f.** Use of supplemental methodology and models for more refined analysis of non-aviation sources also is permitted in consultation with the appropriate FAA program office and AEE.

**2.4g.** All input data should be collected early in the environmental process and should reflect the latest available data. Assistance from the FAA Office of Environment and Energy is available on a case-by-case basis by request through the respective headquarters program office.

### **SECTION 3. COASTAL RESOURCES**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Coastal Barrier Resources Act of 1982 as amended by the Coastal Barrier Improvement Act of 1990 [16 U.S.C. 3501-3510] [PL 97-348]	U.S. Department of Interior Coastal Barrier Act Advisory Guidelines (57 FR 52730, November 5, 1992)	Fish and Wildlife Service Federal Emergency Management Agency
Coastal Zone Management Act as amended [16 U.S.C. 1451-1464] [PL 92-583]	15 CFR part 930, subparts C and D  15 CFR part 923	National Oceanic and Atmospheric Administration, Office of Coastal Zone Management  Appropriate State CZM Agency
Executive Order 13089, Coral Reef Protection (63 FR 32701, June 16, 1998)		National Oceanic and Atmospheric Administration

#### **3.1 REQUIREMENTS.**

**3.1a.** Federal activities involving or affecting coastal resources are governed by the Coastal Barriers Resources Act (CBRA), the Coastal Zone Management Act (CZMA), and E.O. 13089, Coral Reef Protection. The CBRA prohibits, with some exceptions, Federal financial assistance for development within the Coastal Barrier Resources System that contains undeveloped coastal barriers along the Atlantic and Gulf coasts and Great Lakes. The CZMA and the National Oceanic and Atmospheric Administration (NOAA) implementing regulations (15 CFR part 930) provide procedures for ensuring that a proposed action is consistent with approved coastal zone management programs. E.O. 13089, Coral Reef Protection, requires Federal agencies to ensure that any actions that they authorize, fund, or carry out will not degrade the conditions of coral reef ecosystems.

**3.1b.** Permits/Certificates: Not applicable.

#### **3.2 FAA RESPONSIBILITIES.**

**3.2a. CBRA.** Maps specifically identifying lands included in the CBRA system are available from the Fish and Wildlife Service (FWS) office administering the CBRA program. If additional guidance on CBRA is needed, refer to the Department of Interior's (DOI) CBRA Advisory Guidelines (57 FR 52730, November 5, 1992). If the proposed action would occur on land within the CBRA system and involve funding for development, the action must receive an FWS exemption from the provisions of the CBRA. Results of consultation with FWS must be incorporated in the environmental document. Project-related impacts on coastal resource biotic resources and water quality may be described in the document's CBRA section or in the sections of the document addressing these biotic and water quality issues.

**3.2b. CZMA.** When a proposed action affects (changes the manner of use or quality of land, water, or other coastal resources, or limits the range of their uses) the coastal zone in a State with an approved coastal zone management (CZM) program, the EA or EIS shall include the following:

(1) For Federally assisted activities or for other activities FAA itself undertakes, the views of the appropriate State or local agency as to the relationship of such activities with the approved State coastal zone management program, and the determination of the State as to whether the proposal is consistent with the approved State coastal zone management program. However, if full consistency with the coastal zone management program is prohibited by existing laws, such as aviation laws and safety standards, omit these views. Instead, the EA or EIS should state that it provided to the State or local agency a written statement citing the statutory provisions or other legal authority that limited FAA's discretion to comply with the management program.

(2) For activities that the FAA itself undertakes, the EA or EIS should include the same information listed above for federally assisted activities. If the State or local agency that administers the CZM program objects to the consistency determination, then the FAA may proceed with the federal activity only if the FAA determines that full consistency is prohibited by existing laws specifically applicable to the agency, such as aviation laws. In such a case, the EA or EIS should further state that the FAA provided the State or local agency with a written statement clearly describing the statutory provisions, legislative history, or other legal authority that limits the FAA's discretion to be fully consistent with the enforceable policies of the CZM program.

**3.2c. E.O. 13089, Coral Reef Protection.** Under this executive order, U.S. coral reef ecosystems are defined to mean those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States. When a proposed FAA action may affect U.S. coral reef ecosystems, the FAA shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to measures reducing impacts from pollution, sedimentation, and fishing. To the extent consistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, and local government agencies, Tribes, nongovernmental organizations, the scientific community, and commercial interests as part of the U.S. Coral Reef Initiative. Refer to the National Action Plan for Coral Reef Conservation and NOAA's Coral Reef Information System (CoRIS) for further information regarding significant impacts to coral reefs and marine protected areas.

**3.2d.** Other statutes, regulations, and executive orders may apply such as the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444, and 16 U.S.C. 1431-1434), the Abandoned Shipwreck Act of 1987 (43 U.S.C. 2101 et seq.).

**3.3 SIGNIFICANT IMPACT THRESHOLDS.** (No specific thresholds have been established)

**3.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**3.4a.** When a State having an approved CZM program raises an objection to the proposed action because the action would not be consistent with the applicable CZM plan, the FAA can not approve the action, unless the objection is satisfied, or it is successfully appealed to the Secretary of Commerce. The process will be normally completed prior to a determination by the FAA of whether or not an EIS is needed for the action. Actions of concern include:

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

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

**3.4b.** If any issues remain that have not been resolved regarding the relationship of the action to an approved CZM program, such issues are identified in the scoping process and resolved in the EIS. In this situation, the State coastal zone management agency is invited to participate in the scoping process.

**3.4c.** For proposed actions determined to be inconsistent with the State's approved program and if the project cannot be modified so that it is consistent with the plan, the final EIS shall include a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or is necessary in the interest of national security. If a finding is not obtained from the Secretary of Commerce, the FAA cannot approve the proposed action.

**3.4d. CBRA.** Information regarding CBRA application and funding exceptions, including consultation with FWS, is sufficient for EIS purposes. Any significant impacts are reported under other appropriate impact categories.

**3.4e. CZMA.** CZM consistency applies only to States having an approved CZM plan. If an action would occur in a State not having an approved CZM plan, the FAA should consult (as necessary) with State and Federal agencies having jurisdiction over or expertise on the affected resources to determine if additional information is needed. Discuss impacts on these resources in sections of the environmental document prepared for those resources.



## **SECTION 4. COMPATIBLE LAND USE**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 47501-47507)	14 CFR part 150	Federal Aviation Administration

### **4.1 REQUIREMENTS.**

**4.1a.** The compatibility of existing and planned land uses in the vicinity of an airport is usually associated with the extent of the airport's noise impacts. Airport development actions to accommodate fleet mix changes or the number of aircraft operations, air traffic changes, or new approaches made possible by new navigational aids are examples of activities that can alter aviation-related noise impacts and affect land uses subjected to those impacts. In this context, if the noise analysis described in the noise analysis section (section 14) concludes that there is no significant impact, a similar conclusion usually may be drawn with respect to compatible land use. However, if the proposal would result in other impacts exceeding thresholds of significance which have land use ramifications, for example, disruption of communities, relocation, and induced socioeconomic impacts, the effects on land use shall be analyzed in this context and described accordingly under the appropriate impact category with any necessary cross-references to the Compatible Land Use section to avoid duplication.

**4.1b.** For airport actions, the Compatible Land Use section of the environmental document shall include documentation to support the required airport sponsor's assurance under 49 USC 47107(a)(10), formerly section 511(a)(5) of the 1982 Airport Act, that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. The assurance must be related to existing and planned land uses.

**4.1c.** The Airport Development Grant Program (49 USC 47101 *et seq.*) requires that a project may not be approved unless the Secretary of Transportation is satisfied that the project is consistent with plans (existing at the time the project is approved) of public agencies for development of the area in which the airport is located (49 USC 47106(a)(1)).

**4.1d.** Permits/Certificates: Not applicable.

### **4.2 FAA RESPONSIBILITIES.**

**4.2a.** Local land use determinations are reserved rights of local governments. However, FAA officials will contact the sponsor and representatives of affected communities to encourage the development of appropriate compatible land use measures early in the project planning stage. The environmental document shall address what is being done by the jurisdiction(s) with land

use control authority, including an update on any prior assurance. When local land use jurisdictions have adopted local noise standards that differ from FAA's significant noise threshold (see Section 14.3 of this appendix), FAA will disclose those local standards in its NEPA documentation.

**4.2b.** Table 1 (taken from Part 150) provides Federal compatible land use guidelines for several land uses as a function of DNL values. The ranges of DNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular DNL level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or non-compatible land use is determined by comparing the predicted or measured DNL values at a site to the values listed in Table 1.

**4.2c. Noise Sensitive Area.** This is an area where noise interferes with normal activities associated with its use. Normally, noise sensitive areas include residential, educational, health, and religious structures and sites, and parks, recreational areas (including areas with wilderness characteristics), wildlife refuges, and cultural and historical sites. For example, in the context of noise from airplanes and helicopters, noise sensitive areas include such areas within the Day Night Level (DNL) 65 noise contour. Individual, isolated, residential structures may be considered compatible within the 65 DNL noise contour where the primary use of land is agricultural and adequate noise attenuation is provided. Also, transient residential use such as motels should be considered compatible within the 65 DNL noise contour where adequate noise attenuation is provided. A site that is unacceptable for outside use may be compatible for use inside of a structure, provided adequate noise attenuation features are built into that structure. (See table 1 on land use in this section; section 14 on noise in this appendix; and 14 CFR part 150, Airport Noise Planning, Land Use Compatibility Guidelines). The FAA recognizes that there are settings where the 65 DNL standard may not apply. In these areas, the responsible FAA official will determine the appropriate noise assessment criteria based on specific uses in that area. (See also section 6.2i of this appendix for further guidance.) In the context of launch vehicle operations, noise sensitive areas may include such sites within approximately 40 miles of the launch site for launches of very large rockets, whereas noise sensitive areas may include such sites within approximately 2 miles of the launch site for launches of small rockets. In the context of facilities and equipment, such as emergency generators or explosives firing ranges, but not including aircraft, noise sensitive areas may include such sites in the immediate vicinity of operations, pursuant to the Noise Control Act of 1972, (See State and local ordinances, which may be used as guidelines for evaluating noise impacts from operation of such facilities and equipment.)

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

Land Use	Yearly day-night average sound level ( $L_{dn}$ ) in decibels					
	< 65	65-70	70-75	75-80	80-85	> 85
<b>Residential</b>						
Residential, other than mobile homes and transient lodgings	Y	N (1)	N (1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N (1)	N (1)	N (1)	N	N
<b>Public Use</b>						
Schools	Y	N (1)	N (1)	N	N	N
Hospitals, nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Government services	Y	Y	25	30	N	N
Transportation	Y	Y	Y (2)	Y (3)	Y (4)	Y (4)
Parking	Y	Y	Y (2)	Y (3)	Y (4)	N
<b>Commercial Use</b>						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail- building materials, hardware and farm equipment	Y	Y	Y (2)	Y (3)	Y (4)	N
Retail trade-general	Y	Y	25	30	N	N
Utilities	Y	Y	Y (2)	Y (3)	Y (4)	N
Communication	Y	Y	25	30	N	N
<b>Manufacturing and Production</b>						
Manufacturing, general	Y	Y	Y (2)	Y (3)	Y (4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y (6)	Y (7)	Y (8)	Y (8)	Y (8)
Livestock farming and breeding	Y	Y (6)	Y (7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
<b>Recreational</b>						
Outdoor sports arenas and spectator sports	Y	Y (5)	Y (5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts, and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N
Numbers in parenthesis refer to notes; see continuation of Table 1 for notes and key.						
The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute Federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.						
(more)						

**TABLE 1—LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS (CONTINUED)**

<b>Key to Table 1</b>	
Y (YES)	Land Use and related structures compatible without restrictions.
N (NO)	Land Use and related structures are not compatible and should be prohibited.
NLR	Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.
25, 30, or 35	Land use and related structures generally compatible; measures to achieve NLR of 25, 30 or 35 dB must be incorporated into design and construction of structure.
<b>Notes for Table 1</b>	
(1)	Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.
(2)	Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(3)	Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(4)	Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.
(5)	Land use compatible provided special sound reinforcement systems are installed.
(6)	Residential buildings require an NLR of 25.
(7)	Residential buildings require an NLR of 30.
(8)	Residential buildings not permitted.
(end of Table 1)	

**4.3 ANALYSIS OF SIGNIFICANT IMPACTS.** When the noise analysis (see Noise, section 14) indicates that, pursuant to NEPA, a significant noise impact will occur over noise sensitive areas within the DNL 65 dB contour, the analysis should include a discussion of the noise impact on those areas. Any mitigation measures to be taken in addition to those associated with other land use controls shall be discussed. FAA Advisory Circular 150/5020-1, Noise Control and Compatibility Planning for Airports, presents guidance for airport operators and planners to help achieve compatibility between airports and their environs. Part 150 guidelines include traditional recreational uses that may be protected under section 4(f) of the DOT Act (recodified as 49 U.S.C. 303). Special consideration needs to be given to whether Part 150 land use categories are appropriate for evaluating noise impact on unique and sensitive section 4(f) properties. (See Department of Transportation Act, Section 4(f), in section 6 of this appendix). For example, Part 150 land use categories are not sufficient to determine the noise compatibility of areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute, or to address noise effects on wildlife. (See section 14.3, SIGNIFICANT IMPACT THRESHOLDS, of this appendix).

## **SECTION 5. CONSTRUCTION IMPACTS**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
See requirements below		

### **5.1 REQUIREMENTS.**

**5.1a.** Local, State, Tribal, or Federal ordinances and regulations address the impacts of construction activities, including construction noise, dust and noise from heavy equipment traffic, disposal of construction debris, and air and water pollution. Many of the specific types of impacts that could occur and permits or certificates that may be required are covered in the descriptions of other appropriate impact categories. Additionally, see the section on Hazardous Materials, Pollution Prevention, and Solid Waste the requirements under E.O. 12088, as amended, Federal Compliance with Pollution Control Standards, concerning compliance with foreign pollution control standards in the construction and operation of Federal facilities outside the United States.

**5.1b. Permits/Certificates:** Clean Water Act section 402 National Pollutant Discharge Elimination System (NPDES) permit (when construction disturbs 1 acre or more).

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

**5.3 SIGNIFICANT IMPACT THRESHOLDS.** Construction impacts alone are rarely significant pursuant to NEPA. Refer to the air quality, water, fish, plants and wildlife, and other relevant impact categories for further guidance in assessing the significance of the potential construction impacts.

**5.4 ANALYSIS OF SIGNIFICANT IMPACTS.** In an unusual circumstance where a construction impact would create significant consequences that cannot be mitigated, a more thorough discussion is needed, including the results of consultations with those agencies that have concerns and the reasons why such impacts cannot be avoided or mitigated to insignificant levels. For example, in areas designated severe nonattainment for ozone, consider whether NO<sub>x</sub> emissions caused by construction equipment for major capital improvement projects would result in potentially significant air quality impacts.

**SECTION 6. DEPARTMENT OF TRANSPORTATION ACT, SECTION 4(f)**

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

**6.1 REQUIREMENTS.**

**6.1a.** The Federal statute that governs impacts in this category is commonly known as the Department of Transportation (DOT) Act, section 4(f) provisions. Section 4(f) of the DOT Act, which is codified and renumbered as section 303(c) of 49 U.S.C., provides that the Secretary of Transportation will not approve any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance or land from an historic site of national, State, or local significance as determined by the officials having jurisdiction thereof, unless there is no feasible and prudent alternative to the use of such land and such program, and the project includes all possible planning to minimize harm resulting from the use. This order continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as "section 4(f)" matters.

**6.1b.** Procedural requirements are set forth in Order DOT 5610.1C, Attachment 2, paragraph 4. The FAA also uses as guidance to the extent relevant the Federal Highway Administration and Urban Mass Transportation Administration's guidance defining *Constructive Use* under 23 CFR 771.135 (56 FR 13269, April 1, 1991).

**6.1c.** Designation of airspace for military flight operations is exempt from section 4(f). The Department of Defense reauthorization in 1997 provided that "[n]o military flight operations (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of section 303(c) of title 49, United States Code"(PL 105-85, Nov. 18, 1997).

**6.1d.** Permits/Certificates: Not Applicable.

**6.2 FAA RESPONSIBILITIES.**

**6.2a.** Any part of a publicly owned park, recreation area, refuge, or historic site is presumed to be significant unless there is a statement of insignificance relative to the whole park by the Federal, State, or local official having jurisdiction thereof. Any such statement of insignificance is subject to review by the FAA.

**6.2b.** Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for

park, recreation, wildlife, waterfowl, or historic purposes. National wilderness areas may serve similar purposes and shall be considered subject to section 4(f) unless the controlling agency specifically determines that for section 4(f) purposes the lands are not being used.

**6.2c.** Where property is owned by and currently designated for use by a transportation agency and a park or recreation use of the land is being made only on an interim basis, a section 4(f) determination would not ordinarily be required. The FAA official or sponsor should indicate in any lease or agreement involving such use that this use is temporary.

**6.2d.** Where the use of a property is changed by a State or local agency from a section 4(f) type use to a transportation use in anticipation of a request for FAA approval, section 4(f) shall be considered to apply, even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of section 4(f).

**6.2e.** For section 4(f) properties, the initial assessment will determine whether the requirements of section 4(f) are applicable. When there is an actual physical taking of lands being used for park or other purposes in conjunction with a project, there is generally no latitude for judgment regarding 4(f) applicability. Use within the meaning of section 4(f) includes not only actual physical takings of such lands but also adverse indirect impacts (constructive use) as well. When there is no physical taking, but there is the possibility of constructive use, the FAA must determine if the impacts would substantially impair the 4(f) resource. If there would be no substantial impairment, the action would not constitute a constructive use and would not therefore invoke section 4(f) of the DOT Act. The responsible FAA official must consult all appropriate Federal, State, and local officials having jurisdiction over the affected section 4(f) resources when determining whether project-related noise impacts would substantially impair the resources. Following consultation, FAA is ultimately solely responsible for section 4(f) applicability and determinations.

**6.2f.** Substantial impairment occurs only when the activities, features, or attributes of the resource that contribute to its significance or enjoyment are substantially diminished. A project which respects a park's territorial integrity may still, by means of noise, air pollution, or otherwise, dissipate its aesthetic value, harm its wildlife, defoliate its vegetation, and take it in every practical sense. For section 4(f) purposes, the impairment must be substantial. With respect to aircraft noise, for example, the noise must be at levels high enough to have negative consequences of a substantial nature that amount to a taking of a park or portion of a park for transportation purposes

**6.2g.** The land use compatibility guidelines in 14 CFR Part 150 (Part 150) may be relied upon to determine whether there is a constructive use under section 4(f) where the land uses specified in the Part 150 guidelines are relevant to the value, significance, and enjoyment of the 4(f) lands in question. Part 150 guidelines may be relied upon in evaluating constructive use of lands devoted to traditional recreational activities. FAA may primarily rely upon the average day night sound levels (DNL) in Part 150 rather than single event noise analysis because DNL is the best measure of significant impact on the quality of the human environment, is the only noise



metric with a substantial body of scientific data on the reaction of people to noise, and has been systematically related to Federal compatible land use guidelines.

**6.2h.** Turning to historic sites, FAA may also rely upon Part 150 guidelines to evaluate impacts on historic properties that are in use as residences. Part 150 guidelines may not be sufficient to determine the noise impact on historic properties where a quiet setting is a generally recognized purpose and attribute, such as a historic village preserved specifically to convey the atmosphere of rural life in an earlier era or a traditional cultural property. If architecture is the relevant characteristics of an historic neighborhood, then project-related noise does not substantially impair the characteristics that led to eligibility for or listing on the National Register of Historic Places. As a result the noise does not constitute a constructive use and section 4(f) would not be triggered. A historic property would not be used for section 4(f) purposes when FAA issues a finding of No historic properties affected or No Adverse Effect under section 106 of the National Historic Preservation Act. Findings of Adverse Effects do not automatically trigger section 4(f) unless the effects substantially impair the affected resource's historical integrity. Although there may be some physical taking of land, Section 4(f) does not apply to archeological resources where the responsible FAA official, after consultation with the SHPO/THPO determines that the archeological resource is important chiefly for data recovery, and is not important for preservation in place. FAA is responsible for complying with section 106 of the National Historic Preservation Act (NHPA) (see section 11 of this appendix) regardless of the disposition of section 4(f).

**6.2i.** When assessing use of section 4(f) properties located in a quiet setting and the setting is a generally recognized feature or attribute of the site's significance, carefully evaluate reliance on part 150 guidelines. Additional factors must be weighed in determining whether to apply the thresholds listed in Part 150 guidelines to determine the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges, and historic sites including traditional cultural properties. The Part 150 land use compatibility table may be used as a guideline to determine significance of noise impacts on section 4(f) properties to the extent that the land uses specified bear relevance to the value, significance, and enjoyment of the lands in question. For example, part 150 guidelines may not be sufficient for all historic sites (see 6.2h above) and do not adequately address the effects of noise on the expectations and purposes of people visiting areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

**6.2j.** If FAA determines that section 4(f) is applicable and there are no prudent and feasible alternatives which would avoid such use, the effect on the section 4(f) land shall be described in detail. The description of the land shall include size, activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, or other factors necessary to determine the effects of the action and measures needed to minimize harm. Such measures may include the mitigation of project impacts or the replacement of land and facilities and design measures such as planting or screening to mitigate any adverse effects. Replacement satisfactory to the Secretary of the Interior (DOI) is specifically required for recreation lands aided by the DOI's Land and Water Conservation Fund and for certain other lands falling under the jurisdiction of the DOI. The environmental document shall include evidence of concurrence

or efforts to obtain concurrence of appropriate officials having jurisdiction over such land regarding actions proposed to minimize harm.

**6.2k.** If Federal grant money was used to acquire the land involved (e.g., open space under the Department of Housing and Urban Development (HUD) and various conservation programs under DOI) the environmental document shall include evidence of or reference to appropriate communication with the grantor agency.

**6.3 SIGNIFICANT IMPACT THRESHOLDS.** A significant impact would occur pursuant to NEPA when a proposed action either involves more than a minimal physical use of a section 4(f) property or is deemed a "constructive use" substantially impairing the 4(f) property, and mitigation measures do not eliminate or reduce the effects of the use below the threshold of significance (e.g., by replacement in kind of a neighborhood park). Substantial impairment would occur when impacts to section 4(f) lands are sufficiently serious that the value of the site in terms of its prior significance and enjoyment are substantially reduced or lost. If there is a physical or constructive use, FAA is responsible for complying with section 4(f) even if the impact is less than significant for NEPA purposes.

**6.4 ANALYSIS OF SIGNIFICANT IMPACTS.** The FAA shall consult with the officials having jurisdiction over the section 4(f) property(ies), and other agencies, as necessary. The EIS should thoroughly analyze and document prudent and feasible alternatives that would avoid the use of section 4(f) property and provide detailed measures to minimize harm.

## **SECTION 7. FARMLANDS**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Farmland Protection Policy Act [7 U.S.C. 4201-4209] [PL 97-98, amended by section 1255 of the Food Security Act of 1985, PL 99-198]	7 CFR part 658 (59 FR 31109, June 17, 1994)  7 CFR part 657 (43 FR 4030)  CEQ Memorandum on Analysis of Impacts on Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act, August 11, 1980 (45 FR 59189, September 8, 1980)	USDA Natural Resource Conservation Service  Council on Environmental Quality

### **7.1 REQUIREMENTS.**

**7.1a.** The Farmland Protection Policy Act (FPPA) regulates Federal actions with the potential to convert farmland to non-agricultural uses.

**7.1b.** Permits/Certificates: Not Applicable.

### **7.2 FAA RESPONSIBILITIES.**

**7.2a.** Consultation with the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) should occur to determine if the FPPA applies to the land the proposed action would convert to non-agricultural use, or if an exemption to the FPPA exists. If it is determined that the farmland is protected by the FPPA, formal coordination as provided by 7 CFR part 658 is required.

**7.2b.** The responsible FAA official should become aware of and make all reasonable attempts to consult with other Federal, State, and local officials who have responsibility over any adjacent, nearby, or potentially affected lands to assure compatibility of the proposed action and affected farmland.

**7.2c.** For FPPA-regulated farmland, scoring of the relative value of the site for preservation is performed by the NRCS and the proponent. If the total score on Form AD-1006 "Farmland Conversion Impact Rating" is below 160, no further analysis is necessary. Scores between 160 and 200 may have potential impacts and require further consideration of alternatives that would avoid this loss. Consider measures that reduce the amount of protected farmland that the project would convert or use farmland having relative lower value. If NRCS fails to respond within 45 days and if further delay would interfere with construction activities, the action may proceed as though the site were not farmland protected by the FPPA. The FAA then documents a "no response" by the NRCS in the environmental document.

**7.2d.** If there are unresolved land use issues with State and local officials, then further consultation will be required.

**7.3 SIGNIFICANT IMPACT THRESHOLDS.** A significant impact would occur pursuant to NEPA when the total combined score on Form AD 1006 (copies available from NRCS) ranges between 200 and 260 points. Note that impact severity increases as the total combined score approaches 260 points.

**7.4 ANALYSIS OF SIGNIFICANT IMPACTS.** The analysis evaluates the impacts on agricultural production in the area; compatibility with State, local and private programs and policies to protect farmland; any disruption of the farming community either as a direct result of the construction or by changes in land use associated with the action; and non-viability of farm support services in the area as a result of farmland conversion. Measures to minimize harm will be considered, including adjustments in the action to reduce the amount of farmland taken out of production or retain as much of the land as possible for agricultural use by incorporation into compatible land use plans.

**SECTION 8. FISH, WILDLIFE, AND PLANTS**

<b>Statute and Other Guidance</b>	<b>Implementing Regulations and Other Guidance</b>	<b>Oversight Agency</b>
<p>Endangered Species Act of 1973 [16 U.S.C. §§1531-1544] [PL 93-205]</p> <p>Marine Mammal Protection Act of 1972 [16 U.S.C. §§1361-1421h]</p> <p>Related Essential Fish Habitat Requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act [16 U.S.C. §1855(b)(2)]</p>	<p>50 CFR parts 17 and 22 50 CFR part 402 50 CFR parts 450-453 50 CFR 600.920</p> <p>MOU [among 14 Federal agencies] on Implementation of the Endangered Species Act, September 28, 1994</p> <p>MOU on Using an Ecosystem Approach in Agency Decision-making, December 5, 1995</p> <p>CEQ Guidance on Incorporating Biodiversity Considerations into Environmental Impact Analysis, January 1993</p>	<p>U.S. Department of the Interior, Fish and Wildlife Service</p> <p>U.S. Department of Commerce, National Marine Fisheries Service</p> <p>Council on Environmental Quality</p>
<p>Sikes Act Amendments of 1974 [PL 93-452]</p>		State Natural Heritage Programs
<p>Fish and Wildlife Coordination Act of 1958 [16 U.S.C. §§661-666c] [PL 85-624]</p>		Fish and Wildlife Service
<p>Fish and Wildlife Conservation Act of 1980 [16 U.S.C. §§2901-2912] [PL 96-366]</p> <p>Executive Order 13112, Invasive Species (64 FR 6183, February 8, 1999)</p> <p>Migratory Bird Treaty Act of 1981 [16 U.S.C. §§703-712]</p> <p>Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds [66 FR 3853, January 17, 2001]</p> <p>Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federally Landscaped Grounds (April 26, 1994); Executive Order 13148, Greening the Government Through Leadership in Environmental Management (April 22, 2000).</p>	<p>50 CFR part 83</p> <p>DOT Policy on Invasive Species, April 22, 1999</p> <p>50 CFR Part 10</p> <p>Environmental Protection Agency, Office of the Federal Environmental Executive, Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837, August 10, 1995)</p> <p>Paragraph 3f of attachment 2; Order DOT 5610.1C</p>	<p>Fish and Wildlife Service</p> <p>Departments of the Interior, Commerce, Agriculture, and Transportation</p> <p>Department of the Interior</p> <p>Environmental Protection Agency</p> <p>Office of the Federal Environmental Executive</p>
<p>The Animal Damage Control Act of 1931 [7 U.S.C. 426-426c] [46 stat. 1468]</p>		U.S. Department of Agriculture; Animal and Plant Health Inspection Service; Wildlife Services

## **8.1 REQUIREMENTS.**

**8.1a.** Section 7 of the Endangered Species Act (ESA), as amended, applies to Federal agency actions and sets forth requirements for consultation to determine if the proposed action “may affect” an endangered or threatened species. If an agency determines that an action “may affect” a threatened or endangered species, then Section 7(a)(2) requires each agency, generally the lead agency, to consult with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), as appropriate, to ensure that any action the agency authorizes, funds, or carries out is not likely to jeopardize the continued existence of any Federally listed endangered or threatened species or result in the destruction or adverse modification of critical habitat. (The effects on fish, wildlife, and plants include the destruction or alteration of habitat and the disturbance or elimination of fish, wildlife, or plant populations.) If the Secretary of the Interior has developed a recovery plan for an affected species pursuant to section 4(f) of the ESA, that plan should be reviewed by FAA NEPA practitioners to ensure that assessments of impacts from FAA actions consider the management actions and criteria for measuring recovery identified in the plan. If a species has been proposed for Federal listing as threatened or endangered, or a critical habitat has been proposed, section 7(a)(4) states that each agency shall confer with the Services. Refer to the FWS and NMFS "Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act," March 1998. Section 9 prohibits a Federal agency from taking, without an incidental take permit, any endangered species. Where a conservation plan has been developed pursuant to a section 10 permit (incidental take permit), the FAA NEPA practitioner should ensure that the impact analysis contained in the NEPA document for the affected species is consistent with the predicted impacts described in the conservation plan. Under the Magnuson-Stevens Act, Federal agencies must consult with the NMFS with regard to any action authorized, funded, or undertaken that may adversely affect any essential fish habitat identified under the Act. The consultation procedures are generally similar to ESA consultation requirements.

**8.1b.** The Sikes Act and various amendments authorize States to prepare statewide wildlife conservation plans and the Department of Defense (DOD) to prepare similar plans for resources under its jurisdiction. Actions should be checked for consistency with the State Wildlife Conservation Plans and DOD plans where such plans exist.

**8.1c.** The Fish and Wildlife Coordination Act requires that agencies consult with the State wildlife agencies and the Department of the Interior (FWS) concerning the conservation of wildlife resources where the water of any stream or other water body is proposed to be controlled or modified by a Federal agency or any public or private agency operating under a Federal permit.

**8.1d.** The Fish and Wildlife Conservation Act provides for financial and technical assistance to States to develop conservation plans, subject to approval by the Department of the Interior, and implement State programs for fish and wildlife resources. The Fish and Wildlife Conservation Act also encourages all Federal departments and agencies to utilize their statutory

and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of non-game fish and wildlife and their habitats, in furtherance of the provisions of this Act.

**8.1e.** The Migratory Bird Treaty Act prohibits private parties (and federal agencies in certain judicial circuits from intentionally taking a migratory bird, their eggs, or nests. Take is defined as "pursue, hunt, shoot, wound, kill, trap, capture, or collect" (50 CFR §10.21). The MBTA prohibits taking, selling, or other activities that would harm migratory birds, their eggs or nests, unless the Secretary of the Interior authorizes such activities under a special permit. Contact U.S. Fish and Wildlife, as needed, regarding this issue. Information on this requirement is available at 50 CFR Part 21.

**8.1f.** Pursuant to Executive Order 13112, Invasive Species, of February 3, 1999, Federal agencies whose actions may affect the status of invasive species (alien species whose introduction does or is likely to cause economic or environmental harm to human health) are directed to use relevant programs and authorities, to the extent practicable and subject to available resources, to prevent the introduction of invasive species, and provide for restoration of native species and habitat conditions in ecosystems that have been invaded. Agencies are not to carry out actions that they believe are likely to cause or promote the introduction or spread of invasive species unless the benefits of such actions clearly outweigh the potential harm, and all feasible and prudent measures to minimize risk of harm should be taken in conjunction with the actions.

**8.1g.** The Presidential Memorandum on Economically and Environmentally Beneficial Landscaping encourages the use of native plants at Federal facilities and in federally funded landscaping projects. In addition, FAA Advisory Circular 150/5200-33, Hazardous Wildlife Attractants on or near Public Use Airports, recommends that a wildlife management biologist review landscaping plans for airports to minimize attracting hazardous wildlife (i.e., wildlife commonly associated with wildlife-aircraft strikes) to aircraft movement areas.

**8.1h.** Also, it is the policy of the FAA, consistent with NEPA and the CEQ regulations, to encourage the use of a systematic, interdisciplinary approach that integrates ecological, economic, and social factors during the decisionmaking process. The goals of this approach are to restore and maintain the health, sustainability (i.e., doing things today to protect tomorrow's environment), and biological diversity of ecosystems, while supporting sustainable economies and communities (i.e., economies and community activities that consider the environmental needs of succeeding generations). Actions should reflect sensitivity to regional ecological and economic needs and support FAA's mission to ensure aviation safety. An ecosystem approach emphasizes: (1) ensuring that all relevant and identifiable ecological and economic consequences, both long- and short-term, are considered; and (2) improving coordination among Federal agencies.

**8.1i.** In accordance with 40 CFR 1507.2(e), 1508.8(b) and 1508.27, the CEQ guidance on incorporating biodiversity considerations into environmental impact analyses under the National Environmental Policy Act requires Federal agencies to consider the effects of Federal actions on

biodiversity to the extent that is possible to both anticipate and evaluate those effects. The guidance outlines the general principles and discusses the importance of context -- that is, examining the indirect, direct, and cumulative impacts of a specific project in the regional or ecosystem context.

**8.1j.** In addition, the MOU on Using an Ecosystem Approach in Agency Decision-making requires FAA to participate, as appropriate to its mandates, in ecosystem management efforts initiated by other Federal agencies, by state or local governments, Tribes, or as a result of local grass-roots efforts. The ecosystem approach, consistent with the requirements in NEPA to use ecological information, emphasizes consideration of all relevant and identifiable ecological and economic consequences both long term and short term; coordination among Federal agencies; partnership; communication with the public; efficient and cost-effective implementation; use of best available science; improved data and information management, and responsiveness to changing circumstances.

**8.1k. Permits/Certificates:** Various wildlife statutes, such as the Marine Mammal Protection Act, require permits, or the Endangered Species Act requires issuance of a Biological Opinion, if an action may affect a Federally-protected species. An incidental take permit may be required with a no jeopardy/adverse modification biological opinion issued by FWS under the ESA.

## **8.2 FAA RESPONSIBILITIES.**

**8.2a.** Coordination is to be initiated with the FWS or NMFS, as appropriate, pursuant to the ESA for Federally listed endangered, threatened, and candidate species or designated critical habitat, and, pursuant to the Fish and Wildlife Coordination Act where there is a potential impact on water resources with the Services as well as other Federal, State, and local agencies and Tribes having administration over fish, wildlife, and plant resources. FAA will integrate this coordination with the NEPA process to make these reviews more efficient and effective. For Federally listed, proposed, and candidate species and listed and proposed critical habitat, this initial step is known as initiation of consultation and triggers the ESA section 7(d) prohibition on irreversible or irretrievable commitment of resources.

**8.2b.** Letters will be obtained from these officials on the possible effects of the proposal on these resources and possible mitigation measures. The letters from the appropriate officials will provide an indication of the potential for substantial damage to water resources and harm to wildlife attributable to the proposal, if applicable.

**8.2c.** As appropriate, the responsible FAA official shall ensure that consultation and coordination with wildlife management specialists from the U.S. Department of Agriculture's Wildlife Service or other qualified wildlife biologists has occurred. These efforts shall focus on proposed activities, including mitigation efforts, to prevent creating wildlife-aircraft hazards or exacerbating existing ones. (Refer to Section 18.2 of this appendix of this order for further information.)



**8.2d. Biological Assessments:** A biological assessment (BA) is defined as information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. BA's are mandatory for "major construction activities." (See 50 CFR 402.12(b).) BA's are not required to analyze alternatives to proposed actions. The recommended contents of a BA are found at 50 CFR 402.12(f). For other types of proposed actions, the Federal agency must provide the Services with the information the Federal agency used in evaluating the likely effects of the action. The FAA need not initiate formal consultation with the Services if, as a result of preparation of a BA, or as a result of informal consultation with the Services, the FAA determines that the proposed action is not likely to adversely affect any listed species or critical habitat (see 50 CFR 402.14).

**8.2e. Informal consultation under ESA section 7:** Informal consultation is a process that includes all discussions, correspondence, etc., between the Services and the FAA or its designated non-Federal representative. It is designed to assist Federal agencies in determining whether formal consultation or a conference is required. If, during formal consultation, it is determined by the FAA, with written concurrence of the Service, that a proposed action is not likely to adversely affect listed species or critical habitat, the consultation process is terminated and no further action is necessary. During informal consultation, the Service may suggest modifications to the proposed action that FAA could implement to avoid the likelihood of adverse effects to listed species or critical habitat.

**8.2f. Formal consultation under ESA section 7(a)(2):** For Federally listed threatened and endangered species and Federally designated critical habitat, formal consultation with FWS or NMFS under section 7(a)(2) of the ESA is triggered when: (1) the FAA determines that the proposed action "may affect" Federally listed species or designated critical habitat, unless the FWS or NMFS concur in writing that the proposed action is not likely to adversely affect any listed species or critical habitat, or (2) the FWS or NMFS does not concur with the agency's determination that the proposed action is not likely to adversely affect Federally listed species or designated critical habitat. Formal consultation is concluded when FWS or NMFS issues a Biological Opinion, which will either be a No Jeopardy/Adverse Modification Opinion, including an incidental take statement), or a Jeopardy/Adverse Modification Opinion.

**8.2g. Biological Opinion:** If a Biological Opinion states that the proposed action is not likely to jeopardize the continued existence of Federally listed threatened or endangered species in the affected area or results in the destruction or adverse modification of Federally designated critical habitat in the affected area, it is a No Jeopardy/Adverse Modification Opinion. An incidental take statement included in this opinion may provide one or more reasonable and prudent measures, with associated terms and conditions, to minimize the level of incidental take. If a Biological Opinion determines that the proposed action is likely to jeopardize the species or adversely modify critical habitat (a Jeopardy/Adverse Modification Opinion), it will include nondiscretionary reasonable and prudent alternatives. Formal consultation may be reinitiated when the amount or extent of incidental take is exceeded; new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously

considered; the action is modified in a manner causing effects to listed species or critical habitat not previously considered; or a new species is listed or critical habitat is designated that may be affected by the action.) (See 50 CFR 402.14 for further guidance on formal consultation.)

**8.2h. Conference under ESA section 7(a)(4):** The conference process is designed to assist in identifying and resolving any potential conflicts with proposed species early in the planning process. If the proposed action is likely to adversely affect Federally proposed species or critical habitat, then conference is required for Federally proposed species and Federally proposed critical habitat. If a proposed action will affect both listed and proposed species (or both designated and proposed critical habitat), the conference can be incorporated into the formal consultation process. Conference can be useful in later expediting the consultation process when a proposed species is listed or proposed critical habitat is designated. The FWS or NMFS may offer conservation recommendations during consultations, which describe suggested discretionary conservation actions (see 50 CFR 402.02 and 402.14(j)).

**8.2i. Other statutes:** Other statutes, such as the Marine Mammal Protection Act, may also apply depending upon the circumstances.

**8.2j.** For species not Federally listed as threatened or endangered and habitats not Federally designated as critical under the ESA:

(1) The FWS, NMFS, or other Federal or State agency or Tribe responsible for protecting wildlife where there is an impact on a water resource indicate that the impacted area is human-dominated, or the impact is transient in nature, or the alteration would not result in a long-term or permanent loss of wildlife or water resources.

(2) If, after these efforts, significant impacts are unavoidable, then the responsible FAA official conducts further consultation and analysis with the Services and other Federal, State, Tribal, or local officials in the preparation of the EIS.

**8.3 SIGNIFICANT IMPACT THRESHOLDS.** A significant impact to Federally-listed threatened and endangered species would occur when the FWS or NMFS determines that the proposed action would be likely to jeopardize the continued existence of the species in question, or would result in the destruction or adverse modification of Federally-designated critical habitat in the affected area. The involvement of Federally listed threatened or endangered species and the possibility of impacts as potentially serious as extinction or extirpation, or destruction or adverse modification of designated critical habitat, are factors weighing in favor of a finding of significance. However, an action need not involve a threat of extinction to Federally listed species to meet the NEPA standard of significance. Lesser impacts including impacts on non-listed species could also constitute a significant impact. In consultation with agencies and organizations having jurisdiction or special expertise concerning the protection and/or management of the affected species, NEPA practitioners should consider factors affecting population dynamics and sustainability for the affected species such as reproductive success rates, natural mortality rates, non-natural mortality (e.g., road kills and hunting), and the minimum population levels required for population maintenance. Relevant information may be

obtained from State and local wildlife management agencies and the scientific literature concerning wildlife management (e.g., USDA National Wildlife Research Center library).

#### **8.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**8.4a. General.** The FAA will, using the NEPA process for efficiency, coordinate with the Services, other Federal, State, or local wildlife agencies, Tribes, and others as necessary to assess the potential impacts. If the proposed action affects water resources and thereby triggers the Fish and Wildlife Coordination Act, then the FAA considers the recommendations of the FWS, NMFS, other Federal agencies, and the State or Tribal wildlife agency and assures that further detailed analysis is performed. This may include:

- (1) Use of aerial photographs and field reconnaissance.
- (2) Determining the significance of impacted habitats including the importance and range of fauna and flora and the location of nesting and breeding areas.
- (3) A more detailed analysis of other impact areas (e.g., noise, air quality, water quality).

**8.4b. Federally listed threatened and endangered species and Federally designated critical habitat.** For Federally listed threatened and endangered species and Federally designated critical habitats, the FAA forwards to the Services the BA as required for major construction activities or supporting information as needed for other types of proposed actions with a request to initiate formal consultation under section 7(a)(2) of the ESA. The BA may be incorporated by reference or included in an EA. If the FAA accepts an alternative proposed by the FWS or the NMFS or proposes another acceptable alternative, the FAA also may conclude that impacts are not significant. If neither of the above apply, the potential impact is considered significant (see section 8.3 for other factors to consider when determining the significance of effects on affected species). In scoping the preparation of an EIS, the FAA requests the Services to be cooperating agencies on the basis of their jurisdiction. Further detailed analysis may consider:

- (1) Further mitigation measures or action modifications.
- (2) Further biological assessment.
- (3) If the FWS or NMFS issues a Jeopardy/Adverse Modification Opinion, FAA may not proceed with the action unless the project is modified sufficiently to enable the Services to issue a No Jeopardy/Adverse Modification Opinion, or the action is exempted under 50 CFR part 451.

## **SECTION 9. FLOODPLAINS**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951)	Order DOT 5650.2, Floodplain Management and Protection	Federal Aviation Administration
Appropriate State and local construction statutes	Federal Emergency Management Agency "Protecting Floodplain Resources: A Guidebook for Communities," 1996	Federal Emergency Management Agency  Appropriate State and local agencies

**9.1 REQUIREMENTS.** Executive Order 11988 directs Federal agencies to take action to reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and restore and preserve the natural and beneficial values served by floodplains. Order DOT 5650.2 contains DOT's policies and procedures for implementing the executive order. Agencies are required to make a finding that there is no practicable alternative before taking action that would encroach on a base floodplain based on a 100-year flood (7 CFR 650.25).

### **9.2 FAA RESPONSIBILITIES.**

**9.2a.** The responsible FAA official will consult with State and local officials to determine the boundaries of floodplains near the site of the action. The Federal Emergency Management Agency (FEMA) maps are the primary reference for determining the extent of the base floodplain. If a floodplain designation is in question, FEMA or the Army Corps of Engineers will be contacted for information.

**9.2b.** If the proposed action and reasonable alternatives are not within the limits of, or if applicable, the buffers of a base floodplain, a statement to that effect should be made. No further analysis is needed.

**9.2c.** If the agency finds that the only practicable alternative requires siting in the base floodplain, a floodplain encroachment would occur and further environmental analysis is needed. The FAA shall, prior to taking the action, design or modify the proposed action to minimize potential harm to natural floodplain values or within the base floodplain. The action is to be consistent with regulations issued according to section 2(d) of E.O. 11988. The FAA shall also provide the public with an opportunity to review the encroachment through its public involvement process and any public hearing presentations shall include identification of encroachment.

**9.2d.** A floodplain finding is required in cases of significant encroachment. This finding confirms that there is no practicable alternative to placing the project in the floodplain and that

all measures to minimize harm will be included in the project. (see sec. 2a of E.O. 11988, Floodplain Management; dated May 24, 1977 [42 FR 26951])

**9.2e.** When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the FAA shall (1) reference in the conveyance those uses that are restricted under identified Federal, State, or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

**9.2f.** FAA's analysis shall also indicate if the encroachment would be a "significant encroachment," that is, whether it would cause one or more of the following impacts:

- (1) The action would have a high probability of loss of human life.
- (2) The action would likely have substantial, encroachment-associated costs or damage, including interrupting aircraft service or loss of a vital transportation facility (e.g., flooding of a runway or taxiway; important navigational aid out of service due to flooding, etc.); or
- (3) The action would cause adverse impacts on natural and beneficial floodplain values.

**9.2g.** If one or more of the alternatives under consideration includes significant floodplain encroachments, then any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document availability, shall note that fact.

**9.2h.** When flood storage is displaced, the analysis should consider compensatory floodwater storage impacts on upstream property, or how that storage could affect aquatic or other biotic systems. Development project not causing higher flood elevations or altering flood storage could adversely affect beneficial or natural floodplain values.

**9.2i.** Actions outside a base floodplain may adversely affect natural and beneficial floodplain resources. Consider impacts on natural and beneficial floodplain values, water pollution, increased runoff from impermeable surfaces, changes in hydrologic patterns, or induced secondary development. Mitigation to minimize such impacts is needed to comply with the applicable regulations. This mitigation may include: committing to comply with special flood-related design criteria; elevating facilities above the base flood elevation; or minimizing fill placed in floodplains.

**9.3 SIGNIFICANT IMPACT THRESHOLDS.** Floodplain impacts would be significant pursuant to NEPA if it results in notable adverse impacts on natural and beneficial floodplain values. Mitigation measures for base floodplain encroachments may include committing to special flood related design criteria, elevating facilities above base flood level, locating nonconforming structures and facilities out of the floodplain, or minimizing fill placed in floodplains.

#### **9.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**9.4a.** When the FAA prepares an EIS addressing significant impacts in this category, Federal, State, or local agencies with floodplain jurisdiction and expertise may become cooperating agencies. Further analysis includes the following as applicable to the action:

- (1) Further consideration of the practicability of any alternatives.
- (2) Inclusion of all practicable measures in the design of the proposal to minimize harm and to restore and preserve the natural and beneficial floodplain values affected. Commitments to later compliance with special flood related design criteria or the imposition, in advance, of protective conditions may be warranted in some situations.
- (3) Evidence that the action conforms to applicable State and local floodplain protection standards.

**SECTION 10. HAZARDOUS MATERIALS, POLLUTION PREVENTION,  
AND SOLID WASTE**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Community Environmental Response Facilitation Act of 1992) [42 U.S.C. 9601-9675]	40 CFR parts 300, 311, 355, and 370	Environmental Protection Agency
Pollution Prevention Act of 1990 [42 U.S.C. 1310-1319]	CEQ Memorandum on Pollution Prevention and the National Environmental Policy Act, January 12, 1993 (58 FR 6478)	Council on Environmental Quality Environmental Protection Agency
Toxic Substances Control Act of 1976, as amended (TSCA) [15 U.S.C. 2601-2692] [PL 94-469]	40 CFR parts 761 and 763	Environmental Protection Agency
Resource Conservation and Recovery Act of 1976 (RCRA) [PL 94-580, as amended by the Solid Waste Disposal Act of 1980 (SWDA), PL 96-482, the Hazardous and Solid Waste Amendments of 1984, PL 98-616, and the Federal Facility Compliance Act of 1992, (FFCA) PL 103-386] [42 U.S.C. 6901-6992(k)]	40 CFR parts 240-280	Environmental Protection Agency
Executive Order 12088, Federal Compliance with Pollution Control Standards, October 13, 1978 (43 FR 47707), amended by Executive Order 12580, January 23, 1987 (52 FR 2923) January 29, 1987		Environmental Protection Agency
Executive Order 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements (58 FR 41981, August 3, 1993)		Environmental Protection Agency
Executive Order 12580, Superfund Implementation, amended by Executive Order 13016 and 12777		

## 10.1 REQUIREMENTS.

**10.1a.** Four primary laws have been passed governing the handling and disposal of hazardous materials, chemicals, substances, and wastes. The two statutes of most importance to the FAA in proposing actions to construct and operate facilities and navigational aids are the Resource Conservation and Recovery Act (RCRA) (as amended by the Federal Facilities Compliance Act of 1992) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA or Superfund) and the Community Environmental Response Facilitation Act of 1992. RCRA governs the generation, treatment, storage, and disposal of hazardous wastes. CERCLA provides for consultation with natural resources trustees and cleanup of any release of a hazardous substance (excluding petroleum) into the environment.

**10.1b.** E.O. 12088, as amended, directs Federal agencies to: comply with “applicable pollution control standards,” in the prevention, control, and abatement of environmental pollution; and consult with the EPA, State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution. For construction or operation of FAA facilities outside the United States, the FAA must ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

**10.1c.** Executive Order 12580, Superfund Implementation amended by Executive Order 13016 and 12777 delegates most response authorities to EPA and USCG for abatement. Agencies must participate in response teams with opportunity for public comment before removal action is taken.

**10.1d.** FAA actions to fund, approve, or conduct an activity may require consideration of hazardous material, pollution prevention, and solid waste impacts in NEPA documentation. NEPA documents prepared in support of project development should include an appropriate level of review regarding the hazardous nature of any materials or wastes to be used, generated, or disturbed by the proposed action, as well as the control measures to be taken. The CEQ Memorandum on Pollution Prevention and the National Environmental Policy Act encourages early consideration, for example, during scoping, of opportunities for pollution prevention. FAA should, to the extent practicable, include pollution prevention considerations in the proposed action and its alternatives; address pollution prevention in the environmental consequences section; and disclose in the record of decision the extent to which pollution was considered. A discussion of pollution prevention may also be appropriate in an EA. Consideration of these issues in evaluating the effects of proposed actions should begin with an understanding of the following three terms:

(1) Hazardous Material – any substance or material that has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce (49 CFR part 172, table 172.101). This includes hazardous substances and hazardous wastes.



(2) Hazardous Waste – a waste is considered hazardous if it is listed in, or meets the characteristics described in 40 CFR part 261, including ignitability, corrosivity, reactivity, or toxicity.

(3) Hazardous Substance – any element, compound, mixture, solution, or substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and listed in 40 CFR part 302. If released into the environment, hazardous substances may pose substantial harm to human health or the environment.

## **10.2 FAA RESPONSIBILITIES.**

**10.2a.** The FAA must comply with applicable pollution control statutes and requirements that may include, but may not be limited to, those listed in Appendix 2 of Order 1050.10B, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

**10.2b.** In accordance with Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, an Environmental Due Diligence Audit (EDDA) shall be conducted to evaluate subject properties for potential hazardous substances contamination that could result in future FAA liabilities.

**10.2c.** FAA actions to fund or approve airport layout plans for terminal area development may also require consideration of solid waste impacts in NEPA documentation. A preliminary review should indicate if the projected quantity or type of solid waste generated or method of collection or disposal will be appreciably different than would be the case without the action. Special attention shall be given to the control of hazardous waste.

**10.2d.** NEPA documents should include appropriate information as described below.

(1) The environmental document should demonstrate that the FAA (or applicant as appropriate) has determined whether hazardous wastes as defined in 40 CFR part 261 (RCRA) will be generated, disturbed, transported or treated, stored or disposed, by the action under consideration. If so, management of these wastes is regulated by 40 CFR parts 260-280 and transportation is governed by 49 CFR parts 171-199. To the extent that the existence of hazardous wastes affects phasing of project construction, analysis of alternatives and consideration of mitigation measures, the means for compliance with applicable regulations must be discussed. It may be helpful to briefly discuss the means for compliance with applicable regulations in the NEPA documentation. For example, operators of activities that would cause hazardous waste must obtain a RCRA hazardous waste generator identification number from EPA or an authorized State. It should also demonstrate that the FAA or applicant has considered pollutant prevention and control in accordance with EO 12088.

(2) The document should analyze alternatives considering applicable permitting requirements, and in the case of direct actions or funding, Federal and State guidelines and

regulations on procurement of recycled or recyclable productions, the source separation and recycling of recyclable products and solid waste storage, transport, or disposal.

(3) The document should analyze the cost and feasibility of alternatives regarding the avoidance or use of hazardous materials, hazardous wastes, recycled materials, recyclable products, and any related need for permits, remediation, storage, transport, or disposal.

(4) The document should indicate the presence of any sites within the action area listed or under consideration for listing on the National Priorities List (NPL) established by EPA in accordance with CERCLA. NEPA documentation should include a discussion of the impact of any NPL or NPL candidate sites on the action and/or impacts of the action on any NPL or NPL candidate sites. NEPA documentation should also identify sites in the vicinity that have been designated RCRA Solid Waste Management Units (SWMU's) and that may impact or be impacted by the action.

(5) The NEPA documentation should reflect that consultation with the appropriate State agency (or EPA) has been initiated. If a formal agreement has been reached, it should be included in the document itself or incorporated by reference, as appropriate. In many cases, construction may not commence until a formal agreement between the FAA (or action sponsor) and the State agency (or EPA) has been executed.

(6) The NEPA documentation, i.e., FONSI, EIS, Record of Decision, and FAA construction contracts should include a provision that in the event previously unknown contaminants are discovered during construction, or a spill occurs during construction, work should stop until the National Response Center (NRC) is notified. The NRC number is (800) 424-8802.

### **10.3 ANALYSIS OF SIGNIFICANT IMPACTS.**

**10.3a.** Generally, additional information or analysis is needed only if problems are anticipated with respect to meeting the applicable local, State, Tribal, or Federal laws and regulations on hazardous or solid waste management. Additional data needed may include results of any further consultation with affected agencies and measures to be taken to minimize the impacts. Disposal that would adversely affect water quality or other environmental resources may be discussed under those sections of the environmental analysis addressing affected resources, with the hazardous material section cross-referencing those sections.

**10.3b.** Actions that involve property listed (or potentially listed on) the NPL are considered significant pursuant to NEPA by definition. In other cases, only an unresolved issue may warrant an EIS. NPL sites usually encompass relatively large areas, such as an entire military base, an electric power generation facility, or even a dumping ground of several million used automobile tires. Not all of the physical grounds within the boundaries of an NPL site are contaminated, which leaves space for siting a facility on "clean" land within the boundaries of an NPL site. If an FAA action involves acquiring property on an NPL site, by definition, it normally is considered a major action with significant impacts. Both FAA NEPA and EDDA guidance

require consideration of exposure to hazardous materials and minimizing further contaminant releases through pollution prevention design when siting on or near contaminated properties. These considerations warrant thorough NEPA environmental analysis. However, an EIS is not necessarily required. Chapter 4, paragraph 405g, of this order allows for mitigating impacts to thresholds below significance, such as siting on "clean" grounds within contaminated properties or NPL sites. Therefore, if appropriately mitigated, acquisition of land within the boundaries of an NPL site does not always have to be viewed as a major action with significant impacts.

**10.3c.** The cost and feasibility of any necessary remediation of hazardous waste contamination should be considered and for guidance on considering existing environmental contamination issues associated with proposed actions to acquire land consult Order 1050.19.

**10.3d.** For guidance on design, construction, and operational compliance of FAA facilities with pollution control statutes, the most current version of the following FAA orders should be consulted:

(1) Order 1050.10, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

(2) Order 1050.14, Polychlorinated Biphenyls (PCB) in the National Airspace System.

(3) Order 1050.15, Underground Storage Tanks at FAA Facilities.

(4) Order 1050.18, Chlorofluorocarbons and Halon Use at FAA Facilities.

**10.3e.** NPL sites, EPA National Priorities List of Superfund sites requiring priority cleanup under the Superfund Program, usually encompass relatively large areas, such as an entire military base, an electric power generation facility or even a dumping ground of several million used automobile tires. Not all of the physical grounds within the boundaries of an NPL site are contaminated, which leaves space for siting a facility on "clean" land within the boundaries of the NPL site. If an FAA action involves acquiring property on an NPL site, it is normally considered a major action with significant impacts. Both FAA NEPA and EDDA guidance require consideration of exposure to hazardous materials and minimizing further contaminant releases through pollution prevention design when siting on or near contaminated properties. These considerations warrant thorough NEPA environmental analysis. However, an EIS is not necessarily required.

**10.3f.** Chapter 4, paragraph 405g (mitigation) allows for mitigating impacts to thresholds below significance, such as siting on "clean" grounds within contaminated properties or NPL sites. Therefore, appropriately mitigated, acquisition of land within the boundaries of an NPL site does not always have to be viewed as a major action with significant impacts.

**10.3g.** "Would this require an EIS for ALP approval covering land on the NPL?" This depends on whether or not the actual ground needed is contaminated or just within the boundaries of the NPL site. If it is "clean" land within the boundaries an EIS is not required. If

some contamination is present, then mitigation to minimize exposure and further releases should be prepared, and the cost of remediation to both the FAA and the Airport Sponsor should be considered. However, if the magnitude of remediation and costs are significant, then preparation of an EIS is justified.

**SECTION 11. HISTORICAL, ARCHITECTURAL, ARCHEOLOGICAL,  
AND CULTURAL RESOURCES**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
<b>Laws Governing National Historic Preservation Programs, National Natural Landmarks, and National Historic Landmarks:</b>		
National Historic Preservation Act of 1966, as amended, including Executive Order 11593, Protection and Enhancement of the Cultural Environment (36 FR 8921, May 13, 1971) [16 U.S.C. 470, 470 note] [PL 102-575 (1992)]	36 CFR parts 60 (National Register of Historic Places (NRHP)), 61 (State and Local Preservation Programs), 62.1 (National Natural Landmarks), 63 (NRHP), 65, 65.1 (National Historic Landmarks), 68 (standards), 73 (World Heritage Program), 78 (waiver of Federal agency section 110 responsibilities), 79 (curation) and 800 (consultation), as revised (65 FR 77697; December 12, 2000, effective January 1, 2001)	National Park Service, various offices Advisory Council on Historic Preservation State Historic Preservation Officer Tribal Historic Preservation Officer
<b>Laws Governing the Federal Archeology Program:</b>		
Antiquities Act of 1906 [16 U.S.C. 431, 432, 433] [PL 59-209 (1906)]	43 CFR part 3 25 CFR part 261	Department of Interior, National Park Service
Archaeological and Historic Preservation Act of 1974, as amended [16 U.S.C. 469-469c] [PL 89-665]	Guidelines for Archeology and Historic Preservation: Standards and Guidelines (DOI) (48 FR 44716, September 29, 1983) 36 CFR part 68	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service
Archaeological Resources Protection Act of 1979, as amended [16 U.S.C. 470aa-470mm] [PL 96-95 (1979)]	43 CFR parts 3 and 7 36 CFR part 79 25 CFR part 262 Federal Archeological Preservation Strategy	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service
Native American Graves Protection and Repatriation Act of 1990 [25 U.S.C. 3001] [PL 101-601 (1990)]	43 CFR part 10 25 CFR 262.8	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service

Statute	Regulation	Oversight Agency
Other Major Federal Historic and Cultural Resource Preservation Laws and Executive Orders		
American Indian Religious Freedom Act of 1978 [ 42 U.S.C. 1996, 1996 note] [PL 95-341 (1978)]	43 CFR 7.7 and 7.32 25 CFR 262.7	
Department of Transportation Act  [49 U.S.C. 303]		Department of Transportation
Public Building Cooperative Use Act of 1976 [40 U.S.C. 601(a), 601(a)(1), 606, 611(c), 612(a)(4)] [PL 94-541]	41 CFR parts 101-17, 101-17.002(l), (m), (n) (rural areas), 101.17.002(i)(2) (urban areas), and 101-19	General Services Administration
Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities (61 FR 26071, May 24, 1996)		Advisory Council on Historic Preservation
Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996)		Assistant to the President for Domestic Policy
Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), and the Presidential Memorandum of April 29, 1994, Government-to-government Relations with Native American Tribal Governments.		
Executive Order 11593, Protection and Enhancement of the Cultural Environment (36 FR 8921, May 13, 1971) (16 U.S.C. 470 note)		Advisory Council on Historic Preservation

## 11.1 REQUIREMENTS.

**11.1a.** The National Historic Preservation Act (NHPA) of 1966, as amended, establishes the Advisory Council on Historic Preservation (ACHP) and the National Register of Historic Places (NRHP) within the National Park Service (NPS). Section 110 governs Federal agencies responsibilities to preserve and use historic buildings; designate an agency Federal Preservation Officer (FPO); identify, evaluate, and nominate eligible properties under the control or jurisdiction of the agency to the National Register. Section 106 requires Federal agencies to consider the effects of their undertaking on properties on or eligible for inclusion in the NRHP; Compliance with section 106 requires consultation with the ACHP, the State Historic

Preservation Officer (SHPO), and/or the Tribal Historic Preservation Officer (THPO) if there is a potential adverse effect to historic properties on or eligible for listing on the National Register of Historic Places. Consultation on preservation-related activities may also occur with other Federal, State, and local agencies, Tribes, Native Hawaiian organizations, the private sector, and the public. Section 112 addresses professional standards. Section 314 discusses confidentiality requirements that may apply to an undertaking.

**11.1b.** The Archeological and Historic Preservation Act of 1974 provides for the preservation of historic American sites, buildings, objects, and antiquities of national significance by providing for the survey, recovery, and preservation of historical and archeological data which might otherwise be destroyed or irreparably lost due to a Federal, Federally licensed, or Federally funded action. The DOI's Standards and Guidelines (48 FR 44716, September 29, 1983) advise Federal agencies on implementation of this law.

**11.1c.** The Archaeological Resources Protection Act (ARPA) prohibits unauthorized excavation of archaeological resources on Federal or Indian lands, establishing standards for permissible excavation by permit. ARPA requires federal agencies to identify archaeological sites on federal lands.

**11.1d.** The Native American Graves Protection and Repatriation Act (NAGPRA) deals with the disposition of cultural items, including human remains, by a Federally funded repository. Additionally, NAGPRA governs the inadvertent discovery of cultural items on Federal or Tribal lands. It provides for the inventory, protection and return of cultural items to affiliated Tribes. NAGPRA requires ARPA permits, as well as consultation with Tribes, for intentional excavation and removal of cultural items from Federal or Tribal lands. Its regulations include provisions that, upon inadvertent discovery, the federal agency will cease all activity in the area of discovery, protect the discovered items, and immediately notify the affected Tribe. Disposition of the items, which will include consultation, must then be carried out in accordance with NAGPRA procedures. For additional information on consultation, see the ACHP's policy statement of June 11, 1993, on Consultation with Native Americans Concerning Properties of Traditional Religious and Cultural Importance.

**11.1e.** The Antiquities Act of 1906 was the first general law providing protection for archeological resources, yet its permitting and prosecution sections have essentially been superseded by ARPA. It authorizes the President to declare areas of public lands as national monuments and to reserve or accept private lands for that purpose.

**11.1f.** The Historic Sites Act of 1935 declares as national policy the preservation for public use of historic sites, buildings, objects, and properties of national significance. It gives the Secretary of the Interior authority to make historic surveys, to secure and preserve data on historic sites, and to acquire and preserve archeological and historic sites. This act also establishes the National Historic Landmarks program for designating properties having exceptional value in commemorating or illustrating the history of the United States. It gives the Secretary of the Interior broad powers to protect nationally significant historic properties, including the Secretary's authority to establish and acquire nationally significant historic sites.

**11.1g.** The American Indian Religious Freedom Act of 1978 requires consultation with Native American groups concerning proposed actions on sacred sites or affecting access to sacred sites. It establishes Federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their right to free exercise of their religion. It allows these peoples to access sites, use and possess sacred objects, and freedom to worship through ceremonial and traditional rites. In practical terms, the act requires Federal agencies to consider the impacts of their actions on religious sites and objects that are important to Native Americans, including Alaska Natives, and Native Hawaiians, regardless of the eligibility for the National Register of Historic Places.

**11.1h.** The Public Building Cooperative Use Act of 1976, along with NEPA and NHPA, encourages the acquisition and use of space in suitable buildings of historic, architectural, or cultural significance. The associated regulations provide procedures for implementing this goal in urban and rural areas.

**11.1i.** Executive Order 13006, Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, requires Federal agencies, when operationally appropriate and economically prudent, to use and maintain historic properties and districts, especially those located in central business areas and to give first consideration when locating Federal facilities to historic properties within historic districts, then developed or undeveloped sites within historic districts, and lastly to historic properties outside of historic districts. Any rehabilitation or construction that is undertaken must be architecturally compatible with the character of the surrounding historic district or properties.

**11.1j.** Executive Order 13007, Indian Sacred Sites, applies to Federal agencies that manage Federal lands, defined as "any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands. Agencies, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, must: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners; and (2) avoid adversely affecting the physical integrity of such sacred sites. Agencies shall maintain the confidentiality of sacred sites by virtue of their established religious significance to, or ceremonial use by, an Indian religion; provided the Tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. The responsible FAA official should consult the provisions in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), and the Presidential Memorandum of April 29, 1994, Government-to-government Relations with Native American Tribal Governments. Agencies are required, in formulating policies significantly or uniquely affecting Tribes, to be guided, to the extent permitted by law, by principles of respect for Tribal self-government and sovereignty, for Tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Tribes. The EO requires Federal agencies to consult on a government-to-government basis with Tribes. This provides meaningful and timely input in development of regulatory policies on matters that significantly or uniquely affect their communities (see



63 FR 27655, May 19, 1998). Additional information may be obtained from the FAA Federal Preservation Officer.

**11.1k.** Executive Order 11593, Protection and Enhancement of the Cultural Environment (36 FR 8921, May 13, 1971; reprinted in 16 U.S.C. 470 note), and Order DOT 5650.1, Protection and Enhancement of the Cultural Environment, November 20, 1972, require that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historic, architectural, or archaeological significance.

## **11.2 FAA RESPONSIBILITIES.**

**11.2a. Consultation.** The SHPO/THPO and other appropriate sources must be consulted for advice early in the environmental process. See 36 CFR part 800 which governs the section 106 consultation process under NHPA and encourages coordination between section 106 and other statutes and with environmental and planning reviews under State or local ordinances. (Undertakings that have the potential to significantly affect historic properties pursuant to NEPA constitute an extraordinary circumstance requiring an EA even if the project normally qualifies as a categorical exclusion under NEPA. Findings of no historic properties present or affected, or no historic properties adversely affected, under NHPA section 106 support determinations of no use (either constructive or physical) under section 4(f) of the DOT Act). Findings of adverse effects do not automatically trigger section 4(f), unless the effects substantially impair the affected resource's historical integrity. See also specific requirements in 36 CFR part 800 and ACHP guidance for public involvement during the consultation process.

**11.2b. Determination of Undertaking.** The responsible FAA official determines whether the proposed action is an "undertaking," as defined in 36 CFR 800.16(y) (and not an undertaking that is merely subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency), and whether it is a type of activity that has the potential to cause adverse effects on historic properties eligible for or listed on the NRHP. If the agency determines, and the SHPO/THPO does not object, that an undertaking does not have the potential to have an effect on historic properties, a historical or cultural resource survey is not necessary and the FAA may issue a determination that the action has no effect. The first step is to identify the area of potential effect (APE) and the historical or cultural resources within it (see Secretary's Standards and Guidelines for Identification).

**11.2c. Determination of Area of Potential Effect (APE).** It is the FAA's responsibility to determine the APE. This determination is made generally in consultation with the appropriate SHPO(s)/THPO(s). APE means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties are subsequently identified within the APE. The ACHP and the SHPO/THPO may provide technical advice.

**11.2d. Identification and Evaluation Process.** The FAA or designee must survey the APE to identify properties potentially eligible for or listed on the NRHP. If any eligible or listed property is identified within the area of the proposed action's APE, the ACHP's regulations,

Protection of Historic Properties (36 CFR part 800) will be consulted and followed. Additional information may be obtained from the FAA's Federal (Historic) Preservation Officer in the Office of Environment and Energy and through cultural resources surveys in the APE.

**11.2e. Traditional Cultural Places.** Traditional cultural places (TCP's) may be eligible for listing on the NRHP's and thus may become the subject of section 106 consultation pursuant to 36 CFR part 800 and the National Register Bulletin 38 on "Guidelines for Evaluating and Documenting Traditional Cultural Properties." Bulletin 38 identifies NRHP criteria for determining whether a place qualifies as a TCP under the NHPA. (Other NPS Bulletins are available to assist in identifying other types of historic properties. Many of these are on file with the FAA Federal Preservation Officer in the Office of Environment and Energy.) The FAA may obtain necessary information to apply the criteria by informally consulting. If informal consultation does not resolve issues relating to identification of properties as NRHP eligible or the determination of effect, then the FAA must follow the procedures for identification and analysis outlined in the Secretary of the Interior's Standards and Guidelines.

**11.2f. Protected Tribal Resources.** Protected Tribal Resources are those natural resources, properties, sites, and items of traditional or customary religious or cultural importance, either on or off Indian lands, retained, by, or reserved by or for, Tribes through treaties, statutes, judicial decisions, or executive orders, including Tribal trust resources.

(1) **Indian Sacred Sites.** If the site is an Indian Sacred Site, as defined in Executive Order 13007, regardless of whether it is the subject of section 106 consultation or eligible for the NRHP, the FAA must consult the Tribe under the AIRFA, E.O. 13007, Indian Sacred Sites, and the Executive Memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments."

**11.2g. Cultural Items.** If cultural items, as defined by Section 2(3) of NAGPRA, are discovered on Federal or Tribal lands, NAGPRA applies. Various archeological statutes, including ARPA and State, local and Tribal laws and ordinances may also apply. Criminal laws and the need to preserve evidence may also be involved when human remains are found.

**11.2h. Determination of Eligibility.** If the SHPO/THPO concurs with the FAA's determination regarding eligibility of a Traditional Cultural Property or Protected Tribal Resource for inclusion in the NRHP, the consultation moves to the next step. If the SHPO/THPO does not concur, the FAA must seek a determination of eligibility from the Keeper of the NRHP. The Keeper of the NRHP is responsible for issuing formal determination of NRHP eligibility when FAA and the SHPO/THPO can't agree on a resource's eligibility for the National Register. (See also 36 CFR part 63.) Any person can request ACHP review of an agency's findings related to identification of historic properties; evaluation of historic significance; and finding that no historic properties are present. As a result of such a request, the ACHP may request the FAA to seek a formal determination from the Keeper. This is called a "Determination of Eligibility" (DOE).

**11.2i. Other Laws.** If no properties have been identified within the APE, and no resources have been identified that are subject to ARPA, NAGPRA, AIRFA, section 4(f) of the DOT Act, the Archeological and Historic Preservation Act, E.O. 13007, Indian Sacred Sites, or other laws covering specific types of cultural resources, then no further analysis is needed.

**11.2j. Effect Findings.** A FAA undertaking would affect a property that is on or eligible for inclusion in the NRHP, if the action has the potential to alter the characteristics of the property making it eligible for inclusion in the NRHP. Regulations discussing the various degrees of effect are presented in 36 CFR Parts 800.4(d) and 800.5. Federal agencies can make one of three types of “effects findings” for an action. The level of finding depends upon how severely a project would alter the characteristics of a property that make it eligible for the NRHP. The following sections discuss the three types of Findings: “no properties affected;” “no adverse effect;” and “adverse effect” (see 36 CFR 800.4(d) and 800.5, if necessary for more detailed information). Although the Responsible FAA Official works closely with the SHPO/THPO to determine an effects finding, the FAA is ultimately responsible for that decision, not the SHPO or THPO.

**11.2k. Finding of No Historic Properties Affected.**

(1) Here, the Responsible FAA official can either determine that no historic properties on or eligible for inclusion in the NRHP are present in the Area of Potential Effect (APE) or that the proposed undertaking will not affect any NRHP properties in the APE. Before making a final decision on the undertaking’s effects, the FAA must provide information specified in 36 CFR 800.11(d) to the SHPO/THPO. This information must describe:

- (A) the undertaking;
- (B) its APE;
- (C) FAA efforts to identify historic properties; and
- (D) FAA’s basis for the finding.

(2) The FAA must also notify all consulting parties of this finding and ensure that the above information is available to them. FAA’s responsibilities under Section 106 are complete if the SHPO/THPO does not object to FAA’s finding within 30 days after receiving the required information. Use of certified mail or other means capable of providing proof of receipt of material is encouraged to record the date when the 30-day review period began.

**11.2l. Finding of No Adverse Effect.**

(1) If a NRHP-eligible property occurs within the undertaking’s APE and the proposed action may affect the property’s historic characteristics, the Responsible FAA Official must apply the criteria of effect listed in 36 CFR 800.5(a). The Official must examine the potential effects in consultation with the SHPO/THPO and any Tribe or Native Hawaiian organization attaching

religious or cultural importance to the identified property. 36 CFR 800.5(a)(3) permits phased assessments of effects when alternatives the agency is considering involve corridors, large land areas, or when access to property is restricted. The FAA Official may propose a “finding of no adverse effect” after determining that the undertaking would not:

- (A) physically destroy the property;
  - (B) alter the property, but, if alterations would occur, they meet the requirements of the Secretary of the Interior’s “Standards for Treatment of Historic Properties” (36 CFR part 68);
  - (C) remove the property from its historic location;  
introduce an atmospheric, audible, or visual feature to the area that would diminish the integrity of the property’s setting, provided the setting contributes to the property’s historical significance;  
or
  - (D) through transfer, sale, or lease, diminishes the long-term preservation of the property’s historic significance that Federal ownership or control would otherwise ensure.
- (2) The FAA Official must provide the SHPO/THPO, any Tribe or Native Hawaiian organization attaching religious or cultural importance to the subject historic property, and all consulting parties with a notice of the proposed finding and the information listed in 36 CFR 800.11(e). This information must:
- (A) describe the project and how FAA is involved;
  - (B) describe the APE;
  - (C) describe steps taken to identify historic properties;
  - (D) describe affected historic properties and the characteristics making them NRHP-eligible;
  - (E) describe the action’s effects on historic properties;
  - (F) provide an explanation of why the adverse affect criteria did not apply; and
  - (G) contain copies or summaries of views that consulting parties or the public provided.
- (3) The SHPO/THPO must provide a response to FAA’s proposed finding within 30 days of receiving the finding and all documentation supporting it. If the SHPO/THPO does not reply within the 30-day period, FAA may assume that the SHPO/THPO agrees with the finding and proceed with the action, unless the ACHP is reviewing the finding per 36 CFR 800.5(c)(3).

(4) If the SHPO/THPO disagrees with FAA's finding within the 30-day period, the SHPO/THPO must provide reasons for that objection. FAA must discuss the objection with the SHPO/THPO to resolve it, or ask ACHP to review it. Likewise, if any Tribe or Native Hawaiian organization attaching religious or cultural importance to the subject property objects to the finding within the 30-day period, it must also notify FAA of its objection, explain the reasons for the objections, and ask ACHP to review the FAA's finding. Also, ACHP may, on its own initiative, within the 30-day period, request FAA'

(5) When a finding is submitted to the ACHP upon request of the FAA, the SHPO/THPO, or at the request of the Council, the FAA shall submit the documentation specified in 36 CFR 800.11(e). The Council shall review the finding and notify the FAA of its determination as to whether adverse effect criteria have been correctly applied within 30 days of receiving the documented finding from the FAA. ACHP's opinion on such matters will be advisory and will not require the FAA to proceed to any further step in the review process. If ACHP does not respond within 30 days, FAA may assume ACHP concurrence with its finding.

(6) The FAA Official must maintain a record of this finding and provide information on it when the public requests. However, the FAA Administrator or any public official receiving grant assistance may protect the confidentiality of information per Section 304 of NHPA (see 36 CFR 800.11(c)).

**11.2m. Finding of Adverse Effect.** If a NRHP-eligible property occurs within the undertaking's APE and the project may alter the property's historic characteristics, the Responsible FAA Official must apply the criteria listed in 36 CFR 800.5(a) to determine the how the action would affect those characteristics. The Official must examine the effects in consultation with the SHPO/THPO and any Tribe or Native Hawaiian organization attaching religious or cultural importance to an identified property. The FAA Official will make a "finding of adverse effect" when the undertaking would:

- (1) physically destroy the property;
- (2) alter the property so severely that it would not meet the requirements of the Secretary of the Interior's "Standards for Treatment of Historic Properties" (36 CFR part 68);
- (3) remove the property from its historic location;
- (4) introduce an atmospheric, audible, or visual feature to the area that would diminish the integrity of the property's setting, provided that setting contributes to the property's historical significance; or
- (5) through transfer, sale, or lease, diminishes any long-term preservation of a property's historic significance that Federal ownership or control would preserve.

**11.2n. Resolving Findings of Adverse Effect.** Due to the level of impact on the historic property leading to a "finding of adverse effect," 36 CFR 800.6 requires Federal agencies to try

to find a way to avoid, minimize, or mitigate those impacts. This section summarizes that process (see 36 CFR 800.6 as needed for more detail).

**(1) Consultation.** Resolution of adverse effects will involve numerous parties having substantial interest in the project. Such consultation is intended to develop and evaluate alternatives or procedures to avoid, minimize, or mitigate the identified adverse effects on the historic property. The following sections discuss those involved in this required consultation.

**(A) SHPO/THPO.** The FAA Official will consult with the SHPO/THPO due to their duty to protect a state or Tribe's historic resources.

**(B) ACHP.** The FAA Official must notify the ACHP of the finding of adverse effect and provide a copy of the information listed in 36 CFR 800.11(e) (noted for convenience in section 11.2(l)(2)(A)-(G) above). The notice shall invite ACHP participation: if the Official wishes to involve the ACHP; if the action would adversely affect a National Historic Landmark; or if the FAA prepares a Programmatic Agreement pursuant to 36 CFR 800.14(b)). In addition to FAA's request, any consulting party, Tribe or Native Hawaiian organization may, on its own, request ACHP participation at any time (36 CFR 800.6(a)(ii)). The ACHP must notify FAA and all consulting parties that it will/will not participate in the proceedings within 15 days of receiving the request. If ACHP will participate, it must notify the FAA Administrator and provide the FAA Official and other consulting parties with a written notice that it will do so. In this instance, consultation to resolve effects will include the FAA, SHPO/THPO, ACHP, and any Tribe or Native Hawaiian organization attaching religious or cultural importance to the affected resource.

**(C) Tribes and Native Hawaiian organizations.** When the affected property is of religious or cultural importance to Tribes or Native Hawaiian organizations, the consultation must include them. These parties must receive information specified in 36 CFR 800.11(e) (in section 11.2(l)(2)(A)-(G) above), unless protected under the confidentiality provisions of 36 CFR 800.11(c).

**(D) Other consulting parties.** The FAA Official and SHPO/THPO and ACHP, if it is participating, may agree to invite other entities with a substantial interest in the proposed action. The FAA must invite local government officials having jurisdiction over affected areas or a proponent that will assume a specific role or responsibility in the resolving impacts (e.g., an airport sponsor or applicant for a commercial launch license). These parties must receive information specified 36 CFR 800.11(e) (in section 11.2(l)(2)(A)-(G) above), unless protected under the confidentiality provisions of 36 CFR 800.11(c).

**(E) Public involvement.** The FAA must provide the public with an opportunity to express their views on resolving adverse effects. To allow informed participation, FAA must make the information 36 CFR 800.11(e) specifies available for public review, unless confidentiality prohibits this (36 CFR 800.11(c)).

**(2) Memorandum of Agreement (MOA).** In most instances, the FAA Responsible Official and SHPO/THPO work to avoid, minimize, or mitigate identified adverse effects. Sometimes the ACHP is included in this effort when it chooses to enter the process or the FAA invites it to do so. A MOA that these parties and, in some cases, invited parties prepare and sign, verifies that the FAA has complied with Section 106. It describes the undertaking and contains instruction and terms that will the FAA will ensure are implemented to avoid, minimize, or mitigate adverse effects. When the ACHP is not participating and FAA and the SHPO/THPO cannot agree, the FAA must request that the ACHP join in the consultation. Detailed information on MOA's is contained in 36 CFR 800.6, particularly, 36 CFR 800.6(b) and (c). Appendix A of these regulations provides detailed guidance on addressing archeological sites. The following sections provide further information on the MOA.

**(A) Signatories.** These parties are solely responsible for developing, amending, and terminating the MOA. If the ACHP is not participating in the resolving adverse effects, the FAA Approving Official and SHPO/THPO will sign the MOA. If ACHP is participating, it too will sign the MOA.

**(B) Invited signatories.** The Approving FAA official may invite other parties to sign the MOA. Typically, these parties would be representatives of Tribes or Native Hawaiian organizations attaching religious or cultural significance to the affected historic resource. They may also be any party that will be responsible for implementing the MOA's terms and conditions of the MOA (e.g., airport sponsor, licensee for commercial space). It is important to note that any party refusing to be an invited signatory does not negate MOA or make it invalid.

**(C) Concurring parties.** The Approving FAA official or other signatory(ies) may invite all consulting parties to concur with the MOA. Refusal of a party to concur in the MOA does not negate or invalidate the MOA.

**(D) Other information.** Information on additional MOA content addressing duration, subsequent discoveries, amendments, and terminations is in 36 CFR 800.6(c)(4)-(7).

**11.2o. Failing to Resolve Adverse Effects.** It is FAA's intent to resolve adverse effects in all cases through consultation and cooperation; however, if further efforts are not productive, follow the instructions in 36 CFR 800.7. In such instances, the FAA Administrator must make the final decision regarding the action's fate (see 800.7(c)(4) for instructions in this case).

**11.2p. Coordinating Section 106 and NEPA.** To reduce paperwork and redundancy between the NEPA and Section 106 processes, Federal agencies may use the NEPA process to make their historical impact review more efficient and effective. But to do so, close adherence to the requirements of 36 CFR 800.8 is required. Cooperation among FAA, SHPO/THPO, consulting parties, the public, and in some instances, ACHP, is a key factor in combining the NEPA and Section 106 processes. Specific requirements for EA and EIS preparation and content are detailed in 36 CFR 800.8(c)(1)-(4). Critical components of this efficiency effort include:

- (1) providing the SHPO/THPO and ACHP with advance notice that FAA will use the NEPA process to satisfy its Section 106 responsibilities;
- (2) defining historic impacts and agency responsibilities under Section 106 early in the planning process to consideration of the widest range of alternatives;
- (3) coordinating planning and/or scoping through agency consultation and public participation to facilitate identifying data needs, analyses, reviews, and the documentation that NEPA and Section 106 require;
- (4) ensuring that the EA, DEIS, or FEIS is submitted for review to the SHPO/THPO and Tribes or Native Hawaiian organizations attaching religious or cultural significance to the affected resource before the NEPA document is available for public comment;
- (5) ensuring that DEIS's and FEIS's are submitted to the ACHP for review;
- (6) ensuring that a MOA is prepared when an EA/FONIS is prepared for a project; and
- (7) using a ROD, in lieu of a MOA, to define binding commitments to avoid, minimize, or mitigate adverse effects on historic properties when an EIS is prepared for a project.

**11.3 SIGNIFICANT IMPACT THRESHOLD.** Regulations at 36 CFR 800.8(a) state that an adverse effect finding does not automatically trigger preparation of an EIS (i.e., a significant impact). The section 106 consultation process includes consideration of alternatives to avoid adverse effects on National Register listed or eligible properties; of mitigation measures; and of accepting adverse effects. But in all cases, the FAA makes the final determination on the level of effect and whether the appropriate action choice is an EIS or FONSI. Advice from the ACHP and SHPO/THPO may assist the FAA in making this determination.

#### **11.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**11.4a.** As noted above, FAA can use the “streamlining” process or “normal” process to meet Section 106 requirements for projects that are subjects of EIS's.

**11.4b. Using the “NEPA/Section 106 streamlining process.”** As noted in section 11.2(p) of this appendix, FAA may use the NEPA process to comply with Section 106 requirements. In this case, the Responsible FAA Official shall adhere to the specific instructions in 36 CFR 800.8(c)(1)-(4) to ensure FAA has met the required steps to use the “streamlining” provision. This information and any other developed during the Section 106 consultation process should be sufficient for EIS purposes.

**11.4c. Using the “normal” Section 106 process.** If FAA is going to prepare an MOA to meet Section 106 requirements for a project assessed in an EIS, the MOA must contain the information discussed in 36 CFR 800.11(f) and in section 11.2n(2)(A)-(D) of this appendix. If FAA has executed a MOA with other signatories before it circulates the DEIS for comment, the



DEIS should include that MOA. In all cases, an executed MOA must be included in the FEIS, unless extenuating circumstances prohibit this. As a result, it is critical that FAA execute the MOA so that FEIS contains it. Waiting to do so until preparation of a ROD is not the preferred way to complete this process to ensure that the FEIS adequately informs the public about measures that will be implemented to avoid, minimize, or mitigate adverse effects.

**11.5 POST-REVIEW DISCOVERIES.** There may be times when, after work on a project has begun historic properties are discovered. In such instances, the FAA must address both the existence of such properties and any potential adverse effects resulting from the project. This can be done in one of two ways.

**11.5a. When pre-construction identification efforts indicate that historic properties are likely to be discovered.** At times, the identification of historic properties efforts for a proposed project, especially a project involving excavation or ground-disturbing activities, may indicate that potentially eligible historic or archeological resources are likely to be discovered during construction. If pre-construction identification efforts indicate that historic properties are likely to be discovered, the FAA shall address such a potential discovery in its initial no adverse effect determination, Programmatic Agreement (if one has been developed) or Memorandum of Agreement (MOA). In particular, a process to resolve any adverse effects, including excavation and recovery, upon such properties must be developed. The process can include provisions to halt construction in the immediate vicinity of the discovered properties if deemed appropriate. When the FAA has developed such a process and then discovers historic properties after completing Section 106 requirements, the FAA should follow the plan that was approved during the Section 106 consultation. Actions in conformance with the process satisfy the FAA's responsibilities under Section 106. If the adverse effect on the historic property is so severe that it will limit the use of the property, then section 4(f) of the DOT Act may be triggered. When the FAA has not prepared a plan to address discovery of unanticipated historic properties, then the FAA must afford the SHPO/THPO, the ACHP, and interested parties an opportunity to comment on effects to these newly discovered properties in one of several ways. (See 36 CFR part 800.13 for additional information.)

**11.5b. Post-review discoveries without prior planning.** At times, historic properties or unanticipated effects on historic properties may be discovered that were completely unanticipated, even through the identification of historic properties and determination of adverse effects efforts. The FAA should make reasonable efforts to avoid, minimize or mitigate adverse effects, if any, to such properties.

**(1) Discovery prior to project approval or prior to starting construction on an approved project.** If the FAA has not yet approved the undertaking or if construction on an approved project has not yet begun, and the FAA discovers historic properties or unanticipated effects on the historic properties, the FAA must consult to resolve any adverse effects as defined in 36 CFR 800.5.

**(2) When discovered property is of value solely for its scientific, prehistoric, historic or archaeological data:** Where the FAA, the SHPO/THPO and any Tribe or Native Hawaiian

organization that might attach religious and cultural significance to the affected property agree that the property is of value solely for its scientific, prehistoric, historic or archaeological data, the FAA may comply with the Archeological and Historic Preservation Act instead of the procedures under Section 106.

**(3) Discovery after project approval or after construction has begun on an approved project.** If the FAA has approved the undertaking and construction has begun and then discovers historic properties or unanticipated effects on the historic properties, the FAA must determine what actions can be taken to resolve any adverse effects. The FAA must also notify the SHPO/THPO and any Tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council (ACHP) within 48 hours of the discovery. The notification should describe the actions proposed by the FAA to resolve the adverse effects. The SHPO/THPO and the Tribe or Native Hawaiian organization and the Council shall respond within 48 hours of notification and the FAA shall take into account their recommendations and carry out appropriate actions. The FAA shall provide a report of the actions when they are completed.

**11.5c. Eligibility of post-review discoveries.** Following consultation with the SHPO/THPO, the FAA may assume, for the purposes of Section 106 consultations, that the newly discovered properties are eligible for the National Register. The FAA shall list the National Register Criteria used to assume the property's eligibility so that that information can be used to determine if there are adverse effects.

**11.5d. Post-review discoveries on Tribal Lands.** The FAA shall comply with applicable Tribal regulations and procedures and obtain the concurrence of the Tribe on the proposed action if there is no process for addressing such post-review discoveries and:

- (1) FAA discovers historic properties on Tribal lands; or
- (2) There are unanticipated effects on historic properties found on Tribal lands, after the FAA has completed Section 106 consultations and construction has commenced.

## **11.6 PROGRAMMATIC AGREEMENTS.**

**11.6a.** The FAA and ACHP may negotiate a programmatic agreement (PA) in a number of situations, but some of the most common are:

- (1) when FAA will govern implementation of a particular program or the resolution of adverse effects from certain complex project situations or repetitive undertakings such as the decommissioning of a particular type of building;
- (2) when an undertaking is complex, wide in scope, and the effects are not known precisely;
- (3) where non-federal parties are delegated major decisionmaking responsibilities;

(4) where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(5) where circumstances warrant departure from the normal Section 106 procedures.

**11.6b.** The FAA may negotiate a PA with the ACHP. A PA may also be negotiated with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) if the undertaking will be repeated in several different States. The FAA may work through the National Association of Tribal Historic Preservation Officers (NATHPO) to facilitate coordination with Tribes.

**11.6c.** Typically, the FAA must be able to describe the undertaking, including the timeframe and whether the undertaking will be staged. For example, as studies are completed, the APE and the types of expected adverse effects as well as the potential for mitigation must be identified before the ACHP will agree to the PA. For more information see 36 CFR 800.14 and the ACHP's "Preparing Agreement Documents."

**11.6d.** Compliance with the procedures established by an approved Programmatic Agreement satisfies the FAA's Section 106 responsibilities for all individual projects of the program covered by the agreement until it expires or is terminated by one of the parties to the PA. If the ACHP determines that the terms of the PA are not being carried out, or that the agreement has been terminated, the FAA shall comply with the Section 106 consultation requirements with regard to the individual projects of the program covered by the agreement.

## **SECTION 12. LIGHT EMISSIONS AND VISUAL IMPACTS**

Statute	Regulation	Oversight Agency
There are no special purpose laws for light impacts and visual impacts.		

### **12.1 REQUIREMENTS.**

**12.1a.** A description of potential impacts due to light emissions or visual impacts associated with a Federal action may be necessary. Consideration should be given to impacts on people and properties covered by section 303 (formerly, 4(f)) of the DOT Act, using guidance in section 6 of this appendix to determine section 4(f) use and significant impact.

**12.1b.** Permits/Certificates: Not Applicable.

### **12.2 FAA RESPONSIBILITIES.**

**12.2a. Light Emissions.** The responsible FAA official considers the extent to which any lighting associated with an action will create an annoyance among people in the vicinity or interfere with their normal activities. Because of the relatively low levels of light intensity compared to background levels associated with most air navigation facilities (NAVAIDS) and other airport development actions, light emissions impacts are unlikely to have an adverse impact on human activity or the use or characteristics of the protected properties. Information will be included in the environmental document whenever the potential for annoyance exists, such as site location of lights or light systems, pertinent characteristics of the particular system and its use, and measures to lessen any annoyance, such as shielding or angular adjustments.

**12.2b. Visual Impacts.** Visual, or aesthetic, impacts are inherently more difficult to define because of the subjectivity involved. Aesthetic impacts deal more broadly with the extent that the development contrasts with the existing environment and whether the jurisdictional agency considers this contrast objectionable. Public involvement and consultation with appropriate Federal, State, and local agencies and tribes may help determine the extent of these impacts. The visual sight of aircraft, aircraft contrails, or aircraft lights at night, particularly at a distance that is not normally intrusive, should not be assumed to constitute an adverse impact. The art and science of analyzing visual impacts is continuously improving and the responsible FAA official should consider, based on scoping or other public involvement, the degree to which available tools should be used to more objectively analyze subjective responses to proposed visual changes.

**12.3 ANALYSIS OF SIGNIFICANT IMPACTS.** When an action is determined to have significant light or visual-related impacts pursuant to NEPA, use the following applicable instructions:

**12.3a. Light Emissions.** The EIS description of potential annoyance from airport lighting and measures to minimize the effects should be documented in a similar fashion in an EIS to that in an EA. Further consideration may concentrate on previously unconsidered mitigation measures and alternatives. It is possible that the responsible FAA official will judge that a special lighting study is warranted.

**12.3b. Visual Impacts.** The impact discussion will normally include appropriate presentation of the application of design, art, architecture and landscape architecture in mitigating adverse visual and other impacts and encouraging enhancement of the environment.

### **SECTION 13. NATURAL RESOURCES AND ENERGY SUPPLY**

Statute	Regulation	Oversight Agency
There are no special purpose laws for natural resources and energy supply.		

#### **13.1 REQUIREMENTS.**

**13.1a.** Executive Order 13123, Greening the Government Through Efficient Energy Management (64 FR 30851, June 8, 1999), encourages each Federal agency to expand the use of renewable energy within its facilities and in its activities. E.O. 13123 also requires each Federal agency to reduce petroleum use, total energy use and associated air emissions, and water consumption in its facilities.

**13.1b.** It is also the policy of the FAA, consistent with NEPA and the CEQ regulations, to encourage the development of facilities that exemplify the highest standards of design including principles of sustainability. All elements of the transportation system should be designed with a view to their aesthetic impact, conservation of resources such as energy, pollution prevention, harmonization with the community environment, and sensitivity to the concerns of the traveling public. This is in keeping with section 102(2)(A) of NEPA, which requires all agencies to "...utilize a systematic interdisciplinary approach, which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking...."

**13.1c.** Permits/Certificates: Not Applicable.

#### **13.2 FAA RESPONSIBILITIES.**

**13.2a.** Principles of environmental design and sustainability, including pollution prevention, waste minimization, and resource conservation should be followed generally in project or program planning. For purposes of the EA or EIS, the proposed action will be examined to identify any proposed major changes in stationary facilities or the movement of aircraft and ground vehicles that would have a measurable effect on local supplies of energy or natural resources. If there are major changes, power companies or other suppliers of energy will be contacted to determine if projected demands can be met by existing or planned source facilities. The use of natural resources other than for fuel need be examined only if the action involves a need for unusual materials or those in short supply. For example, if a large volume of water will be required, the availability of a supply of water from existing or planned water facilities or from surface or groundwater sources should be considered. Therefore, evaluation of significant energy, water, and other resource use for major construction actions is important.

**13.2b.** For most actions, changes in energy demands or other natural resource consumption will not result in significant impacts. If an EA identifies problems such as demands exceeding

supplies, additional analysis may be required in an EIS. Otherwise, it may be assumed that impacts are not significant.

**13.3 ANALYSIS OF SIGNIFICANT IMPACTS.** Analysis in an EIS includes detail needed to fully explain the degree of the problem and measures to be taken to minimize the impact. Measures such as more efficient airfield design, ground access improvements, or energy and resource efficient building design will be considered and described where applicable and incorporated in the action to the extent possible. The Department of Energy (DOE) may be a cooperating agency and be of assistance in determining additional specific analysis needed for energy use and in judging the seriousness of impacts.

## **SECTION 14. NOISE**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
49 U.S.C. 47501-47507 (Aviation Safety and Noise Abatement Act of 1979, as amended) 49 U.S.C. 40101 et seq., as amended by PL 103-305 (Aug. 23, 1994) (The Federal Aviation Act of 1958) The Control and Abatement of Aircraft Noise and Sonic Boom Act of 1968 49 U.S.C. 47101 et seq., as amended by PL 103-305 (Aug. 23, 1994) (The Airport and Airway Improvement Act) 49 U.S.C. 2101 et seq. (Airport Noise and Capacity Act of 1990) 49 U.S.C. 44715 (The Noise Control Act of 1972)	14 CFR part 150 Noise Control and Compatibility Planning for Airports Advisory Circular, 150/5020  14 CFR part 161 Notice and Approval of Airport Noise and Access Restrictions	Federal Aviation Administration

### **14.1 REQUIREMENTS.**

**14.1a.** For aviation noise analysis, the FAA has determined that the cumulative noise energy exposure of individuals to noise resulting from aviation activities must be established in terms of yearly day/night average sound level (DNL) as FAA's primary metric. The FAA recognizes CNEL (community noise equivalent level) as an alternative metric for California. An initial noise analysis during the environmental assessment process should be accomplished to determine whether further, more detailed analysis is necessary.

**14.1b.** Permits/Certificates. Not applicable.

### **14.2 FAA RESPONSIBILITIES.**

**14.2a.** If significant noise impacts are expected, the FAA official must prepare a detailed noise analysis as part of an EIS in accordance with the following requirements. An EIS need not be prepared if the proposed action incorporates mitigation that reduces the noise impact below significant noise impact threshold levels.

**14.2b.** All detailed noise analyses must be performed using the most current version of the FAA's Integrated Noise Model (INM), Heliport Noise Model (HNM), or Noise Integrated Routing System (NIRS). Use of an equivalent methodology and computer model must receive



prior written approval from the FAA's Office of Environment and Energy (AEE). Precedence evaluation with FAA screening methodologies, e.g., Area Equivalent Method (AEM) and Air Traffic Noise Screening (ATNS), may be appropriate. Use of equivalent screening methodologies must receive prior written approval from AEE. AEE has approved the DOD computer models MR\_NMAP and MR\_BOOMMAP for use and analysis of Special Use Airspace (SUA).

**14.2c.** All computer model input data should be collected early in the environmental process and should reasonably reflect current and forecasted conditions relative to the proposed action and alternatives. Unless it can be justified, all noise analyses must be performed using the FAA's INM, HNM, and/or NIRS standard and default data. Modification to standard or default data requires written approval from the Office of Environment and Energy (AEE). Guidance for submitting changes to the INM standard or default data can be obtained from the most current INM User's Guide. This guidance also applies for changes to standard or default NIRS data.

**14.2d.** Those who prepare EA's and EIS's will provide input documentation with one copy of the INM/HNM/NIRS input files used in the noise analyses and the corresponding case echo reports to the FAA official on electronic media specified by that official. If equivalent methodologies or the use of non-standard or non-default data are approved, a description of the methodology or additional, non-standard, or non-default data must be submitted along with a copy of AEE's approval.

**14.3 SIGNIFICANT IMPACT THRESHOLDS.** A significant noise impact would occur if analysis shows that the proposed action will cause noise sensitive areas to experience an increase in noise of DNL 1.5 dB or more at or above DNL 65 dB noise exposure when compared to the no action alternative for the same timeframe. For example, an increase from 63.5 dB to 65 dB is considered a significant impact. Special consideration needs to be given to the evaluation of the significance of noise impacts on noise sensitive areas within national parks, national wildlife refuges and historic sites, including traditional cultural properties. For example, the DNL 65 dB threshold does not adequately address the effects of noise on visitors to areas within a national park or national wildlife refuge where other noise is very low and a quiet setting is a generally recognized purpose and attribute.

#### **14.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**14.4a.** For proposed actions involving a single airport which result in a general overall increase in daily aircraft operations or the use of larger/noisier aircraft, as long as there are no changes in ground tracks or flight profiles, the initial analysis may be performed using the FAA's Area Equivalent Method (AEM) computer model. The time of day is also part of the equation used in the AEM method. If the AEM calculations indicate that the proposed action would result in less than a 17 percent (approximately a DNL 1 dB) increase in the DNL 65 dB contour area, it may be concluded that there would be no significant impact over noise sensitive areas and that no further noise analysis is required. If the AEM calculations indicate an increase of 17 percent or more, or if the proposed action is such that use of the AEM is not appropriate, then the proposed

action must be analyzed using the INM or HNM to determine if significant noise impacts will result.

**14.4b.** The determination of significance must be obtained through the use of INM, HNM, or NIRS noise contours and/or grid point analysis along with local land use information and general guidance contained in Appendix A of 14 CFR part 150. Special consideration may need to be given to whether Part 150 land use compatibility categories need adjustment when evaluating the noise impact on properties of unique significance such as national parks, national wildlife refuges, and Tribal sacred sites. For example, Part 150 guidelines are not sufficient to address the effects of noise on some national parks or some parts of national parks. Part 150 land use guidelines are not applicable to determining impacts on wildlife. When instances arise in which aircraft noise is a concern with respect to wildlife impacts, available studies dealing with specific species should be reviewed and used in the analysis.

**14.4c.** In accordance with the 1992 FICON (Federal Interagency Committee on Noise) recommendations, examination of noise levels between DNL 65 and 60 dB should be done if determined to be appropriate after application of the FICON screening procedure (FICON p.3-5). If screening shows that noise sensitive areas at or above DNL 65 dB will have an increase of DNL 1.5 dB or more, further analysis should be conducted to identify noise-sensitive areas between DNL 60-65 dB having an increase of DNL 3 dB or more due to the proposed action. The potential for mitigating noise in those areas should be considered, including consideration of the same range of mitigation options available at DNL 65 dB and higher and eligibility for federal funding. This is not to be interpreted as a commitment to fund or otherwise implement mitigation measures in any particular area. (FICON p. 3-7).

**14.4d.** The INM or HNM will be used to produce the following information:

- (1) Noise exposure contours at the DNL 75 dB, DNL 70 dB, and DNL 65 dB levels. Additional contours are optional and considered on a case-by-case basis.
- (2) Analysis within the proposed alternative DNL 65 dB contour to identify noise sensitive areas where noise will increase by DNL 1.5 dB. Increases of 1.5 dB that introduce new noise sensitive areas to exposure levels of 65 dB or more are included in this analysis.
- (3) Analysis within the DNL 60-65 dB contours to identify noise sensitive areas where noise will increase by DNL 3 dB, only when DNL 1.5 dB increases are documented within the DNL 65 dB contour.

**14.4e.** The noise analysis will be conducted to reflect current conditions and forecast conditions for all reasonable alternatives, including the preferred and no action alternatives. This analysis should include maps and other means to depict land uses within the noise impact area. The addition of flight tracks is helpful in illustrating where the aircraft normally fly. Illustrations shall be large enough and clear enough to be readily understood.

**14.4f.** Noise monitoring data may be included in an EA or EIS at the discretion of the responsible FAA official. Noise monitoring is not required and should not be used to calibrate the noise model.

**14.4g.** DNL contours, grid point, and/or change-of-exposure analysis will be prepared for the following:

(1) Current conditions; and

(2) Future conditions both with and without (no action) the proposal and each reasonable alternative. Comparisons should be done for appropriate timeframes. Timeframes usually selected are the year of anticipated project implementation and 5 to 10 years after implementation. Additional timeframes may be desirable for particular projects.

**14.4h.** If the above comparisons show a DNL 1.5 dB or greater increase over a noise sensitive area exposed to DNL 65 dB or greater as a result of the proposed project or any of its reasonable alternatives (except no action), a level of significant noise impact has been reached.

**14.4i.** The following information will be disclosed in the EIS for each modeling scenario that is analyzed:

(1) The number of people living or residences within each noise contour at or above DNL 65 dB, including the net increase or decrease in the number of people or residences exposed to that level of noise. (Use of maps that depict locations within a community of noise sensitive areas is recommended.)

(2) The location and number of noise sensitive uses (e.g., schools, churches, hospitals, parks, recreation areas) exposed to DNL 65 dB or greater.

(3) Mitigation measures in effect or proposed and their relationship to the proposal.

**14.4j.** When a proposed FAA action would result in a significant noise increase and is highly controversial on this basis, the EIS should include information on the human response to noise that is appropriate for the proposal under analysis. Inclusion of data on background or ambient noise may be helpful.

## **14.5 SUPPLEMENTAL NOISE ANALYSIS.**

**14.5a.** The Federal Interagency Committee on Noise (FICON) report, "Federal Agency Review of Selected Airport Noise Analysis Issues," dated August 1992, concluded that the Day-Night Average Sound Level (DNL) is the recommended metric and should continue to be used as the primary metric for aircraft noise exposure. However, DNL analysis may optionally be supplemented on a case-by-case basis to characterize specific noise effects. Because of the diversity of situations, the variety of supplemental metrics available, and the limitations of

individual supplemental metrics, the FICON report concluded that the use of supplemental metrics to analyze noise should remain at the discretion of individual agencies.

**14.5b.** Supplemental noise analyses are most often used to describe aircraft noise impacts for specific noise-sensitive locations or situations and to assist in the public's understanding of the noise impact. Accordingly, the description should be tailored to enhance understanding of the pertinent facts surrounding the changes. The FAA's selection of supplemental analyses will depend upon the circumstances of each particular case. In some cases, this may be accomplished with a more complete narrative description of the noise events contributing to the DNL contours with additional tables, charts, maps, or metrics. In other cases, supplemental analyses may include the use of metrics other than DNL. Use of supplemental metrics selected should fit the circumstances. There is no single supplemental methodology that is preferable for all situations and these metrics often do not reflect the magnitude, duration, or frequency of the noise events under study.

**14.5c.** Supplemental analyses may be accomplished using the various capabilities of INM or NIRS for specific grid point analysis. Noise analyses can be used in combination with geographic information system (GIS) design programs such as AutoCAD and the U.S. Census TIGER databases to determine various population impacts within specified areas.

**14.5d.** For proposed air traffic or special use airspace actions above 3,000 feet above ground level (AGL), the ATNS or other FAA-approved screening shall be used. The ATNS allows the user to evaluate potential noise impacts resulting from changes in airport arrivals and departures by screening proposed changes to determine whether the change increases the community noise level by 5 decibels or more beneath the aircraft route. Where a proposed change would cause an increase in noise of 5 decibels or greater, FAA considers whether there are extraordinary circumstances that warrant preparation of an environmental assessment.

**14.5e.** For air traffic airspace actions where the study area is larger than the immediate vicinity of an airport, incorporates more than one airport, or includes actions above 3,000 feet AGL, noise modeling will be conducted using NIRS. For those types of studies, NIRS will be used to determine noise impacts from the ground to 10,000 feet AGL. This noise analysis will focus on the change in noise levels as compared to populations and demographic information at population points throughout the study area. Noise contours will not be prepared for the NIRS analysis. However, NIRS will be used to produce change-of-exposure tables and maps at population centroids using the following criteria:

DNL 60-65 dB	$\pm 3$ dB
DNL 45-60 dB	$\pm 5$ dB

**14.5f.** The following metrics have been used in developing supplemental noise analyses for a variety of reasons such as sleep disturbance, speech interference, soundproofing, and analysis for special areas such as national parks:

(1) **SEL (sound exposure level)** - A single event metric that takes into account both the noise level and duration of the event and referenced to a standard duration of one second.

(2) **L<sub>max</sub> (maximum sound level)** - A single event metric that is the highest A-weighted sound level measured during an event.

(3) **L<sub>eq</sub> (equivalent sound level)** - A cumulative level of a steady tone that provides an equivalent amount of sound energy for any specific period.

(4) **TA (time above)** - A time-based metric that gives the duration, in minutes, for which aircraft-related noise exceeded a specified A-weighted sound level during a given period.

(5) **SPL (sound pressure level)** - One-third octave band sound pressure levels that form the starting point for all other noise metrics. SPL provides a detailed description of the frequency components of a single complex sound and are used in assessing the effectiveness of soundproofing.

(6) **Audibility** - A time-based metric developed for use in Grand Canyon National Park to evaluate the substantial restoration of natural quiet as mandated by Public Law 100-91.

**14.5g.** The type and nature of activity potentially impacted should be considered. The FICON report identified sleep disturbance and speech interference as two areas where it is appropriate to consider supplemental metrics. In the case of sleep disturbance, the report referred the reader to a dose-response relationship developed by the US Air Force Armstrong Laboratories. This relationship relates SEL to a percent-awakened number. No provision is made for combining the effects of multiple events. To examine speech interference, FICON recommends using a cumulative A-weighted metric that is limited to the affected time period hours or a Time-above analysis. Additionally, FICON provides a table that relates DNL to speech interference. The guidelines for both sleep interference and communication interference relate the degree of interference to single event indoor noise levels. Refer to FICON for further guidance. In addition, the FAA will consider use of appropriate supplemental noise analysis in consultation with the officials having jurisdiction for national parks, national wildlife refuges, and historic sites including traditional cultural properties where a quiet setting is a generally recognized purpose and attribute that FAA identifies within the study area of a proposed action. Such supplemental noise analysis is not, by itself, a measure of adverse aircraft noise or significant aircraft noise impact. Offices within FAA must consult with and receive approval from AEE in determining the appropriate supplemental noise analysis for use in such cases.

## **14.6 PROJECTS NOT REQUIRING A NOISE ANALYSIS.**

**14.6a.** No noise analysis is needed for proposals involving Design Group I and II airplanes (wingspan less than 79 feet) in Approach Categories A through D (landing speed less than 166 knots) operating at airports whose forecast operations in the period covered by the EA do not exceed 90,000 annual propeller operations (247 average daily operations) or 700 jet operations (2 average daily operations). These numbers of general aviation (GA) propeller and jet

operations result in DNL 60 dB contours of less than 1.1 square miles that extend no more than 12,500 feet from start of takeoff roll. The DNL 65 dB contour areas would be 0.5 (one-half) square mile or less and extend no more than 10,000 feet from start of takeoff roll. Note that the Cessna Citation 500 and any other jet aircraft producing levels less than the propeller aircraft under study may be counted as propeller aircraft rather than jet aircraft.

**14.6b.** No noise analysis is needed for proposals involving existing heliports or airports whose forecast helicopter operations in the period covered by the EA do not exceed 10 annual daily average operations with hover times not exceeding 2 minutes. These numbers of helicopter operations result in DNL 60 dB contours of less than 0.10 (one-tenth) square mile that extend no more than 1,000 feet from the pad. Note that this rule applies to the Sikorsky S-70 with a maximum gross takeoff weight of 20,224 pounds and any other helicopter weighing less or producing equal or less levels.

**14.7 PART 150 NOISE PROPOSALS.** If the proposal requiring an EA or EIS is the result of a recommended noise mitigation measure included in an FAA-approved 14 CFR part 150 noise compatibility program, the noise analysis developed in the program will normally be incorporated in the EA or EIS. The FAA responsible official must determine whether this is sufficient for EA or EIS noise analysis purposes.

**14.8 FACILITY AND EQUIPMENT NOISE EMISSIONS.** The provisions of the Noise Control Act of 1972 (NCA) (P.L. 92-574), as amended, apply. FAA may use State and local standards as a guide for particular activities if these standards are at least as stringent as Federal standards. The NCA provisions apply to all land uses. FAA should give special attention to noise sensitive sites in developing mitigation (e.g., scheduling machinery operations near hospitals).

## **14.9 FLIGHT STANDARDS**

**14.9a.** Flight Standards actions that are subject to environmental procedures and assessments include the issuance of an air carrier operating certificate, an operating certificate, the approval of operations specifications or amendments thereto that may significantly change the character of the operational environment of an airport. The person responsible for issuing the certificate or approving the operations specifications is also responsible for assuring the assessment is prepared. Thorough coordination among Flight Standards District Office personnel, the Regional Flight Standards Division and the Regional Noise Abatement Officer is essential. Coordination among regions is expected if an action crosses regional boundaries.

**14.9b.** In preparing a noise analysis for an assessment, the Flight Standards District Office personnel normally will collect information from the operator that includes airports, types of aircraft and engines, number of scheduled operations per day, and the number of day/night operations. The information should also include the operator's long range plans and operation assumptions that are sufficiently conservative to encompass reasonably foreseeable changes in operations.

**14.9c.** If the carrier declines to furnish the information, or if the furnished information on operations at the airport does not realistically address night operations (in view of the carrier's proposal and pattern of activity at that airport), or if the information otherwise patently understates the potential operations (when compared with carrier's operations at other airports or with other carrier's operations at that airport), the responsible Federal official will develop an operational assumption which includes night operations and which is otherwise consistent with the typical operations of similar carriers at similar airports. This operational assumption will be used in the environmental assessment after coordination with the affected air carrier. If the air carrier objects to the use of this operational assumption in the assessment, the carrier may specify that a lesser level of operations be used in the assessment, provided that the carrier agrees that this lesser level will serve as a limit on the operations specifications. If the carrier refuses such a limitation, the FAA will include all reasonably foreseeable operations in the assessment. In this situation the assessment shall state the operational assumption was developed solely for the purpose of environmental analyses and that it is not to be viewed as a service commitment by the carrier.

**14.9d.** If an EIS is required, the affected operator should be advised as soon as possible and should be requested for any additional required information. District Office personnel will coordinate, as necessary, any activity with the operator. The certificate will not be issued or the operations specifications approved until all issues and questions associated with the EIS are fully resolved and the regional Flight Standards Division manager has concurred with the issuance or approval.

***SECTION 15. SECONDARY (INDUCED) IMPACTS***

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
See requirements below		

Major development proposals often involve the potential for induced or secondary impacts on surrounding communities. When such potential exists, the EA shall describe in general terms such factors. Examples include: shifts in patterns of population movement and growth; public service demands; and changes in business and economic activity to the extent influenced by the airport development. Induced impacts will normally not be significant except where there are also significant impacts in other categories, especially noise, land use, or direct social impacts. In such circumstances, an EIS may be needed.



**SECTION 16. SOCIOECONOMIC IMPACTS, ENVIRONMENTAL JUSTICE, AND  
CHILDREN'S ENVIRONMENTAL HEALTH AND SAFETY RISKS**

Statute	Regulation	Oversight Agency
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).	Order DOT 5610.2, Environmental Justice in Minority and Low-Income Populations, April 15, 1997 CEQ Environmental Justice: Guidance Under the National Environmental Policy Act, December 10, 1997 Final Guidance For Consideration of Environmental Justice in Clean Air Act 309 Reviews, July 1999.	Department of Transportation  Council on Environmental Quality  Environmental Protection Agency
Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 CFR 19883, April 23, 1997).	40 CFR 1508.27	
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601] [PL 91-528 amended by the Surface Transportation and Uniform Relocation Act Amendments of 1987, PL 100-117]	FAA Advisory Circular 150/5100-17 49 CFR part 24 FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects.	Federal Aviation Administration

## 16.1 REQUIREMENTS.

**16.1a. Environmental Justice.** Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and the accompanying Presidential Memorandum, and Order DOT 5610.2, Environmental Justice, require FAA to provide for meaningful public involvement by minority and low-income populations and analysis, including demographic analysis, that identifies and addresses potential impacts on these populations that may be disproportionately high and adverse. Included in this process is the disclosure of the effects on subsistence patterns of consumption of fish, vegetation, or wildlife, and effective public participation and access to this information. The Presidential Memorandum that accompanied E.O. 12898, as well as the CEQ and EPA Guidance, encourage consideration of environmental justice impacts in EA's, especially to determine whether a disproportionately high and adverse impact may occur. Environmental Justice is examined during evaluation of other impact categories, such as noise, air quality, water, hazardous

materials, and cultural resources. When performing analyses of environmental justice impacts, NEPA practitioners should be aware that the Department of Health and Human Services (HHS) poverty guidelines specified for use by DOT Order 5610.2, and the Census Bureau's poverty threshold specified for use in the CEQ and EPA environmental justice guidance, differ slightly (e.g., \$12,100 and \$12,674, respectively, for a family of four in 1989). An analysis of the effects on environmental justice will generally require the use of census data for establishing the demographic and socioeconomic baseline. Use of the Census Bureau's poverty threshold is consistent with the best available demographic data and is appropriate for use in environmental justice impact analysis for NEPA purposes. However, the HHS poverty guideline, which is updated every year on a nation-wide basis, may also be applicable in situations where, for example, survey data is available to identify pockets of poverty within census tracts or sectors. The responsible FAA official may choose to use whichever poverty value is deemed the most appropriate.

**16.1b. Children's Environmental Health and Safety Risks.** Pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, Federal agencies are directed, as appropriate and consistent with the agency's mission, to make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children. Agencies are encouraged to participate in implementation of the Order by ensuring that their policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

**16.1c. Socioeconomic Impacts.** If acquisition of real property or displacement of persons is involved, 49 CFR part 24 (implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), as amended must be met for Federal projects and projects involving Federal funding. Otherwise, the FAA, to the fullest extent possible, observes all local and State laws, regulations, and ordinances concerning zoning, transportation, economic development, housing, etc. when planning, assessing, or implementing the proposed action. (This requirement does not cover local zoning laws, set-back ordinances, and building codes because the Federal government is exempt from them.)

**16.1d. Permits/Certificates.** Not Applicable.

## **16.2 FAA RESPONSIBILITIES.**

**16.2a. Environmental Justice.** The Presidential Memorandum that accompanied Executive Order 12898 encourages the consideration of environmental justice impacts in EA's, especially to determine whether a disproportionately high and adverse impact may occur. Although such an analysis is not required in an EA, it may be helpful in determining whether there is a potentially significant impact. To implement Executive Order 12898, the accompanying Presidential Memorandum, and Order DOT 5610.2, where there is a potentially significant impact as part of its EIS process, the FAA must provide for meaningful public involvement by minority and low-income populations. Additionally, FAA must conduct analysis, including appropriate demographic analysis of the potential effects, to identify and address potential impacts on these populations that may be disproportionately high and adverse. It should then disclose this

information to potentially affected populations for proposed actions that are likely to have a substantial effect and for CERCLA sites. The responsible FAA official should follow the procedures outlined in Order DOT 5610.2 for analyzing the potential impacts, offsetting benefits, potential alternatives, and substantial need. Additional guidance may be obtained from the CEQ publication, "Environmental Justice: Guidance Under the National Environmental Policy Act." When FAA determines that a project has significant effects pursuant to NEPA, the potential for disproportionately high and adverse effects pursuant to environmental justice must be analyzed. FAA must ensure that its NEPA process provides public involvement opportunities for disproportionately affected low income and minority populations to comply with Executive Order 12898 and DOT Order 6510.2.

(1) EIS's should discuss the significant impact that a project would cause, then identify affected populations. If an impact would affect low income or minority populations at a disproportionately higher level than it would other population segments, an environmental justice issue is likely. In such cases, the EIS should:

(A) include demographic information about the affected populations;

(B) include information about the population(s) that have an established use for the significantly affected resource, or to whom that resource is important (i.e., subsistence fishing);

(C) provide results of analysis to determine if a low income or minority population using that resource sustains more of the impact than any other population segments;

(D) identify disproportionately affected low income and minority populations;

(E) discuss alternatives that would reduce the effect on those populations; and

(F) describe possible mitigation to reduce the effect on the disproportionately affected low income and minority populations.

(2) In cases where FAA finds a significant impact, but determines that mitigation would reduce that impact below the applicable significance threshold, the EA should describe how mitigation would reduce the impact to less than significant and verify that the project would not result in disproportionately high and adverse effects on low income and minority populations.

**16.2b. Children's Environmental Health and Safety Risks.** FAA is encouraged to identify and assess environmental health risks and safety risks that the agency has reason to believe could disproportionately affect children. Environmental health risks and safety risks include risks to health or to safety that are attributable to products or substances that a child is likely to come in contact with or ingest, such as air, food, drinking water, recreational waters, soil, or products they might use or be exposed to. The Task Force on Environmental Health Risks and Safety Risks to Children created by the Order may develop guidance and recommendations useful for evaluating actions with the potential to disproportionately affect children.

**16.2c. Socioeconomic Impacts.** The responsible FAA official consults with local transportation, housing and economic development, relocation and social agency officials, and community groups regarding the social impacts of the proposed action. The principal social impacts to be considered are those associated with relocation or other community disruption, transportation, planned development, and employment. The environmental document provides estimates of the numbers and characteristics of individuals and families to be displaced, the impact on the neighborhood and housing to which relocation is likely to take place, and an indication of the ability of that neighborhood to provide adequate relocation housing for the families to be displaced. The environmental document includes a description of special relocation advisory services to be provided, if any, for the elderly, handicapped, or illiterate regarding interpretation of benefits or other assistance available.

### **16.3 SIGNIFICANT IMPACT THRESHOLDS.**

**16.3a. Environmental Justice.** Disproportionately high and adverse human health or environmental effects on minority and low-income populations may represent a significant impact.

**16.3b. Children's Environmental Health and Safety Risks.** Disproportionate health and safety risks to children may represent a significant impact.

**16.3c. Socioeconomic Impacts.** Factors to be considered in determining impact in this category include, but are not limited to, the following:

(1) Extensive relocation of residents is required, but sufficient replacement housing is unavailable.

(2) Extensive relocation of community businesses, that would create severe economic hardship for the affected communities.

(3) Disruptions of local traffic patterns that substantially reduce the levels of service of the roads serving the airport and its surrounding communities.

(4) A substantial loss in community tax base.

### **16.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**16.4a.** This analysis is triggered when the potential for significant impact exists, because of extensive relocation impacts, fragmentation of neighborhoods and communities, disproportionately high adverse impacts on minority or low income communities, disproportionate health and safety risks to children, or other significant community disruption. In these cases, additional analysis is needed to describe the degree of impact and to identify mitigation or alternatives that could minimize such adverse effects.

**16.4b.** If an insufficient supply of generally available relocation housing is indicated, a thorough analysis of efforts made to remedy the problem will be reflected in the EIS including, if necessary, provision for housing of last resort as authorized by section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. If business relocation would cause appreciable economic hardship on the community, if significant changes in employment would result directly from the action, or if community disruption is considered substantial, the EIS will include a detailed explanation of the effects and the reasons why significant impacts cannot be avoided.

**16.4c.** When the EA indicates substantial induced or secondary effects directly attributable to the proposal, a detailed analysis of such effects will be included in the EIS. As pertinent and to the extent known or reasonably foreseeable, such factors as effects on regional growth and development patterns, and spin-off jobs created will be described.

### **SECTION 17. WATER QUALITY**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Federal Water Pollution Control Act, as amended, known as the Clean Water Act [33 U.S.C. 1251-1387] [PL 92-500, as amended by the Clean Water Floodplains and Floodways Act of 1977, 33 U.S.C. 1252, PL 95-217, and PL 100-4]; as amended by the Oil Pollution Act of 1990 (section 311 of the Clean Water Act. Safe Drinking Water Act, as amended (SDWA, also known as the Public Health Service Act) [42 U.S.C. 300f to 300j-26] [PL 104-182] Fish and Wildlife Coordination Act of 1980  [16 U.S.C. 661-666c] [PL 85-624]	40 CFR parts 110-112, 116, 117, 122, 125, 129, 130, 131, 136, and 403	Environmental Protection Agency  State and Tribal Water Quality Agencies

#### **17.1 REQUIREMENTS.**

**17.1a.** The Federal Water Pollution Control Act, as amended (commonly referred to as the Clean Water Act), provides the authority to establish water quality standards, control discharges, develop waste treatment management plans and practices, prevent or minimize the loss of wetlands, location with regard to an aquifer or sensitive ecological area such as a wetlands area, and regulate other issues concerning water quality.

**17.1b.** If the proposed Federal action would impound, divert, drain, control, or otherwise modify the waters of any stream or other body of water, the Fish and Wildlife Coordination Act applies, unless the project is for the impoundment of water covering an area of less than ten acres. The Fish and Wildlife Coordination Act requires the responsible FAA official to consult with the Fish and Wildlife Service (FWS) and the applicable State agency to identify means to prevent loss or damage to wildlife resources resulting from the proposal.

**17.1c.** If there is the potential for contamination of an aquifer designated by the Environmental Protection Agency (EPA) as a sole or principal drinking water resource for the

area, the responsible FAA official needs to consult with the EPA regional office as required by section 1424(e) of the Safe Drinking Water Act, as amended.

**17.1d. Permits/Certificates:**

(1) Project proponents applying for a NPDES permit from EPA or a state, or a section 404 permit from the Army Corps of Engineers or an authorized state, must obtain a water quality certificate (WQC) to comply with section 401 of the Clean Water Act. Section 401 requires issuance of a WQC as part of the permit issuance process.

(2) A National Pollutant Discharge Elimination System (NPDES) permit under section 402 of the Clean Water Act is required for point-source discharges into waters of the U.S. A section 404 permit is required to place dredged or fill material in waters of the U.S. including jurisdictional wetlands (see 33 CFR 330.4 for information on water quality certificates requirements for Nationwide permits). A section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters.

(3) Other State and local permits pertaining to water quality also may be required.

**17.2 FAA RESPONSIBILITIES.** The EA includes sufficient description of a proposed action's design, mitigation measures, including best management practices developed for non-point sources under section 319 of the CWA, and construction controls to demonstrate that State or Tribal water quality standards and any Federal, Tribal, State, and local permit requirements will be met. Consultation with the Federal, Tribal, State, or local officials will be undertaken if there is the potential for contamination of an aquifer designated by the EPA as a sole or principal drinking water resource for the area pursuant to section 1424(e) of the Safe Drinking Water Act, as amended. Consultation with appropriate officials is necessary to determine which permits apply. The EA reflects the results of consultation with regulating and permitting agencies and with agencies that must review permit applications, such as the FWS, the Army Corps of Engineers, and Tribal, State and local officials, which may have specific concerns. Such consultation should be started at an early stage of the EA. The responsible FAA Official must ensure that the applicable water quality certificate is issued before FAA approves the proposed action.

**17.3 SIGNIFICANT IMPACT THRESHOLDS.** Water quality regulations and issuance of permits will normally identify any deficiencies in the proposal with regard to water quality or any additional information necessary to make judgments on the significance of impacts. If the EA and early consultation show that there is a potential for exceeding water quality standards, identify water quality problems that cannot be avoided or satisfactorily mitigated, or indicate difficulties in obtaining required permits, an EIS may be required.

**17.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**17.4a.** When the thresholds indicate that the potential exists for significant water quality impacts, additional analysis in consultation with State or Federal agencies responsible for

protecting water quality will be necessary. These agencies may require specific information or studies.

**17.4b.** In the MOA between the DOT and the Department of the Army on section 404 Permit Processing, there is a provision for elevating permit applications with the Department of the Army. When an Army District Engineer proposes to deny permit or condition one that would cause substantial, unacceptable conditions to the DOT agency, the responsible FAA official shall advise the appropriate FAA program office in Washington, D.C. That office will provide whatever follow-up action may be necessary at the Washington, D.C., level to resolve the differences.



## **SECTION 18. WETLANDS**

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Clean Water Act, section 404 [33 U.S.C. 1344] [PL 92-500, as amended by PL 95-217 and PL 100-4] Rivers and Harbors Act of 1899, section 10  Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961)	33 CFR parts 320–330  Order DOT 5660.1A, Preservation of the Nation's Wetlands	Army Corps of Engineers Coast Guard Environmental Protection Agency

### **18.1 REQUIREMENTS.**

**18.1a.** Executive Order (E.O.) 11990, Order DOT 5660.1A, the Rivers and Harbors Act of 1899, and the Clean Water Act address activities in wetlands. E.O. 11990 requires Federal agencies to ensure their actions minimize the destruction, loss, or degradation of wetlands. It also assures the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, funding, and operation of transportation facilities and projects. Order DOT 5660.1A sets forth DOT policy that transportation facilities should be planned, constructed, and operated to assure protection and enhancement of wetlands.

**18.1b.** Frequently, the FAA or an airport sponsor applies for a section 404 permit for projects requiring dredge or fill activities in jurisdictional waters after the NEPA document has been approved. There are benefits, however, to developing the permit application earlier in the process. Time savings and reduced controversy may outweigh the extra effort required to address section 404 considerations as an integral part of the NEPA process. When the two processes are integrated effectively, the Corps' approval of the permit can be concurrent with or closely follow FAA's approval. The Army Corps of Engineers may adopt the FAA's final NEPA document when making a 404 permit decision, thereby avoiding the need to prepare additional NEPA documents. For further information see 33 CFR part 320, "General Regulatory Policies" (COE), 33 CFR part 325, Appendix B, "NEPA Implementation Procedures for the Regulatory Program," chapter 11 of the Federal Highway Administration guidance cites 40 CFR 80 and 230, "Regulatory Program: Applicant Information," pamphlet EP 1145-2-1, May 1985, U.S. Army Corps of Engineers; and 40 CFR 1500.2.

**18.1c.** On December 13, 1996, the Army Corps of Engineers published a final rule reissuing and substantially revising, the nationwide permit program (NWP) under the Clean Water Act.

**18.1d.** The FAA promotes wetland banking as a mitigation tool for aviation-related projects that must occur in wetlands due to aeronautical requirements (e.g., unavoidable construction of a runway in a wetland due to prevailing wind). The FAA has developed a policy supporting the use of a wetland banking mitigation strategy. Wetland mitigation banking provides a way to mitigate wetland impacts before those impacts occur. Purchasing credits from a bank does not give the purchaser title to wetlands tracts that comprise a bank, however, it does fulfill the requirements of law and is cost effective. Rather, the purchase is simply a payment to the wetland banker for wetland mitigation services that the bank provides. The purchase of credits from an approved bank can be used by a section 404 permittee to satisfy its permit-required mitigation obligations. Copies of this policy are available on the websites of the FAA's Office of Airport Planning and Programming, Community and Environmental Needs Division, APP-600 (<http://www.faa.gov/arp/600home.cfm>), or the Office of Environment and Energy (<http://www.aee.faa.gov>).

**18.1e. Permits/Certificates:**

(1) A section 404 permit is required to place dredged or fill material in waters of the U.S., including wetlands, and a section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters. If a section 404 permit and a section 10 permit are required, then the section 10 permitting process is typically combined with the section 404 permitting process of the Corps of Engineers. However, if only a section 10 permit is needed, then the FAA should follow the Coast Guard's section 10 procedures.

(2) Other State and local permits pertaining to wetlands may also be required. Many Corps Districts now have joint application procedures with their respective states.

**18.2 FAA RESPONSIBILITIES.**

**18.2a.** Early review of proposed actions will be conducted with agencies with special interest in wetlands. Such agencies include State and local natural resource and wildlife agencies, the FWS, the NMFS, the Coast Guard, the Army Corps of Engineers, the Department of Agriculture Wildlife Service, and EPA, as appropriate. This review may be combined as much as possible with the State and local officials. Specific consultation is required under the Fish and Wildlife Coordination Act with the FWS and the State agency having administration over the wildlife resources.

**18.2b.** If the action requires an EA, but it would not affect wetlands, the EA should contain a statement to that effect. In that case, no wetland impact analysis is needed.

**18.2c.** If there is uncertainty about whether an area is a wetland, the local district office of the Army Corps of Engineers or a wetland delineation specialist must be contacted for a delineation determination (or the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service (SCS) to delineate wetlands on agricultural lands). The EA includes information on the location, types, and extent

of wetland areas that might be affected by the proposed action. This information can be obtained from the FWS or State or local natural resource agencies.

**18.2d.** If the action would affect wetlands and there is a practicable alternative that avoids the wetland, this alternative becomes the environmentally preferred alternative, provided there are no other overriding environmental impacts. The EA should state that the original project would have affected wetlands, but selection of the practicable alternative enabled the project proponent to avoid the wetlands.

**18.2e.** If the action would affect wetlands and there is no practicable alternative, all practical means should be employed to minimize the wetland impacts due to runoff, construction, sedimentation, land use, or other reason. The EA or EIS must contain a description of proposed mitigations, with the understanding that a detailed mitigation plan must be developed to the satisfaction of the 404 permitting agency in consultation with those agencies having an interest in the affected wetland.

**18.2f.** Impacts of wetlands can be assessed by using the function and values of the wetlands area as a basis to determine significance. If wetlands functions and value are large in number and critical to the wetland's well-being, it would be appropriate to conduct further study as part of an EIS. For example, the action would substantially alter the hydrology, vegetation, or soils needed to sustain the functions and values of the affected wetland or the wetlands it supports. Conversely, if wetlands functions and values are few in number and/or not important, no significant wetland impacts would occur.

**18.3 SIGNIFICANT IMPACT THRESHOLDS.** A significant impact would occur when the proposed action causes any of the following:

**18.3a.** The action would adversely affect the function of a wetland to protect the quality or quantity of municipal water supplies, including sole source, potable water aquifers.

**18.3b.** The action would substantially alter the hydrology needed to sustain the functions and values of the affected wetland or any wetlands to which it is connected.

**18.3c.** The action would substantially reduce the affected wetland's ability to retain floodwaters or storm-associated runoff, thereby threatening public health, safety or welfare (this includes cultural, recreational, and scientific resources important to the public, or property).

**18.3d.** The action would adversely affect the maintenance of natural systems that support wildlife and fish habitat or economically-important timber, food, or fiber resources in the affected or surrounding wetlands.

**18.3e.** The action would promote development of secondary activities or services that would affect the resources mentioned in items (1) through (4) in this section.

**18.3f.** The action would be inconsistent with applicable State wetland strategies.

## **18.4 ANALYSIS OF SIGNIFICANT IMPACTS:**

**18.4a.** An agency having expertise in wetland impacts or resources may indicate that the action has potential significant wetland impacts. The responsible FAA official shall consult with that agency and, as necessary, the FWS, the Corps of Engineers, EPA, or NRCS (if wetlands are on agricultural lands), and State and local natural resource or wildlife agencies to make a determination on severity of wetland impacts. If the action is on Tribal lands, then the responsible FAA official must consult with Tribal natural resource and wildlife representatives. Any of these agencies may become a cooperating agency due to their expertise or jurisdiction. Permitting agencies may also become cooperating agencies. To the extent practical, the responsible FAA official will ensure that the environmental document meets the needs of the consulted agencies as well as those of the FAA. Scoping is encouraged to meet the needs of the permitting and cooperating agencies. Detailed analysis should include the following, as applicable:

- (1) Considerations specified in E.O. 11990, Protection of Wetlands.
- (2) An opinion should be issued, based on the above considerations, on the action's overall effect on the survival and quality of the remaining wetlands after project implementation.
- (3) Aeronautical safety, transportation objectives, economics, and other factors bearing on the problem.
- (4) Further consideration of the practicability of any alternatives.
- (5) Inclusion of all practicable measures to minimize harm.
- (6) Pursuant to the Fish and Wildlife Coordination Act, the FAA applies the instructions contained above.

**18.4b.** For any action which entails new construction located in wetlands, a specific finding should be made including: (1) there is no practicable alternative to construction in the wetland, and that (2) all practicable measures to minimize harm have been included. The proposed finding should be included in the final EIS or FONSI.

**18.4c.** When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the FAA shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

### ***SECTION 19. WILD AND SCENIC RIVERS***

<b>Statute</b>	<b>Regulation</b>	<b>Oversight Agency</b>
Wild and Scenic Rivers Act of 1968 [16 U.S.C. 1271-1287] [PL 90-542 as amended by PL 96-487]	36 CFR part 297, subpart A (USDA Forest Service)  Department of the Interior and Department of Agriculture, Wild and Scenic River Guidelines for Eligibility, Classification and Management of River Areas (47 FR 39454, September 7, 1982)  CEQ Memorandum on Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, August 11, 1980 (45 FR 59190, September 8, 1980)	Department of the Interior, National Park Service, Fish and Wildlife Service, and Bureau of Land Management  Department of Agriculture, Forest Service  Council on Environmental Quality

#### **19.1 REQUIREMENTS.**

**19.1a.** The Wild and Scenic Rivers Act, as amended, describes those river segments designated or eligible to be included in the Wild and Scenic Rivers System. Under section 5(d)(1), the Department of the Interior (DOI) National Park Service (NPS) River and Trail Conservation Assistance Program (RTCA) within NPS's National Center for Recreation and Conservation (NCRC) maintains a Nationwide Rivers Inventory (NRI) of river segments that appear to qualify for inclusion in the National Wild and Scenic River System but which have not been designated as a Wild and Scenic River or studied under a Congressional authorized study. Some section 5(d) rivers (i.e., those eligible for designation as Wild and Scenic Rivers) may not be included in the NRI maintained by the NPS.

**19.1b.** The President's 1979 Environmental Message Directive on Wild and Scenic Rivers (August 2, 1979) directs Federal agencies to avoid or mitigate adverse effects on rivers identified in the Nationwide Rivers Inventory as having potential for designation under the Wild and Scenic Rivers Act. The August 11, 1980 CEQ Memorandum on Procedures for Interagency Consultation requires Federal agencies to consult with the NPS when proposals may affect a river segment included in the Nationwide Rivers Inventory. The Nationwide Rivers Inventory is included on the Rivers and Trails Conservation Assistance Program's webpage at [www.ncrc.nps.gov/programs/rtca/nri](http://www.ncrc.nps.gov/programs/rtca/nri). For those rivers or river segments which are not study rivers or designated rivers, and are not included in the NRI, the responsible FAA official should

contact the Federal agencies and State or States having jurisdiction over the river to determine what the status of the river or river segment is.

**19.1c.** Under section 7 of the Wild and Scenic Rivers Act, the responsible FAA official must obtain a section 7 determination from the Federal agencies that administer designated or study rivers (see [www.nps.gov/rivers/](http://www.nps.gov/rivers/) for lists of designated and study rivers). The Federal agencies include the USDA Forest Service (USFS), DOI Bureau of Land Management (BLM), DOI NPS, and DOI Fish and Wildlife Service (FWS). States also administer Wild and Scenic Rivers or segments of such rivers and should also be consulted. Note that for study rivers, Congress will, in the act authorizing the study, have designated a specific agency as the lead and the responsible FAA official should initiate consultation with that agency. Designated Wild and Scenic Rivers and study rivers are listed in the NPS's Wild and Scenic Rivers Program website at [www.nps.gov/rivers](http://www.nps.gov/rivers) along the specific Federal and State agencies that have jurisdiction over each.

**19.1d.** Section 12 of the Act requires a Federal agency with jurisdiction over any lands which include, border upon, or are adjacent to any river included, or under study for inclusion in the Wild and Scenic Rivers System to take action necessary to protect such river in accordance with the purposes of the Act. In addition, Federal agencies are required to cooperate with the Secretary of the Interior and appropriate State agencies for the purpose of eliminating or minimizing pollution in protected Inventory rivers. All agencies shall, as part of their normal environmental review processes, consult with the DOI (National Park Service (NPS)) and other Federal and State agencies having jurisdiction prior to taking any actions which could effectively foreclose or downgrade wild, scenic, or recreational river status of rivers in the Wild and Scenic Rivers System, study rivers, river segments in the Nationwide Rivers Inventory, or rivers or river segments otherwise eligible under section 5(d) for inclusion in the Wild and Scenic Rivers System but not on the NRI or under study.

**19.1e.** Permits/Certificates: Not Applicable.

## **19.2 FAA RESPONSIBILITIES.**

**19.2a.** As soon as it appears that the proposed action could affect: (1) a Wild and Scenic River, (2) a river or river segment under study for inclusion in the Wild and Scenic River System, (3) a Nationwide Rivers Inventory river segment, or (4) an otherwise eligible river, the responsible FAA official should identify the Federal agency having jurisdiction over the river if on Federal land or the State and contact them for verification of the status of the river or river segment and jurisdiction for further consultation. If the NPS or other Federal and State agency having jurisdiction indicates that the proposed action could affect a Wild and Scenic River, a study river, a river segment in the Nationwide Rivers Inventory, or an otherwise eligible river or river segment, the responsible FAA official should consult with the appropriate agency for guidance as to avoiding or minimizing impacts.

**19.2b.** For designated Wild and Scenic Rivers, rivers on the NRI, and otherwise eligible rivers, the responsible FAA official must consult with the specific Federal agency having

jurisdiction over Wild and Scenic Rivers (e.g., the state district office of the BLM and the regional offices of the USFS, NPS, and FWS).

**19.2c.** For study rivers, the responsible FAA official should initiate consultation with the agency designated by Congress as the lead for the study.

**19.2d.** For rivers on the NRI, see the CEQ Memorandum on Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory and the CEQ Memorandum on Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory. If no river in the NRI is adversely affected or the impact is not considered severe enough to preclude inclusion of the affected river segment in the Wild and Scenic River System or downgrade its classification (e.g., from wild to recreational), no further analysis is necessary. Consultation with NPS will determine whether or not the impact on any NRI river is significant.

**19.2e.** For rivers or river segments that are eligible under section 5(d) but not on the NRI, the responsible FAA official should consult with the agency or agencies having jurisdiction over the river or river segment.

**19.3 SIGNIFICANT IMPACTS THRESHOLD.** (no specific thresholds have been developed)

#### **19.4 ANALYSIS OF SIGNIFICANT IMPACTS.**

**19.4a.** Under the CEQ Memorandum on Procedures for Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory, when consultation with DOI leads to a determination that the effects on a NRI river segment are significant, or would preclude inclusion in the Wild and Scenic River System or downgrade its classification, the FAA should invite the NPS and any affected land management agencies to be cooperating agencies. If the NPS does not respond to such request for assistance within 30 days, then the FAA may proceed as otherwise planned, taking care to avoid or minimize adverse effects on the National Inventory river. For projects requiring EIS's, the record of decision must adopt appropriate avoidance and mitigation measures and a monitoring and enforcement program.

**19.4b.** The process is significantly impacted when an agency with the jurisdiction over a designated or eligible river segment does not issue a consent determination for the proposed action as required by section 7 of the Wild and Scenic Rivers Act and the impact cannot be mitigated to acceptable levels. If the circumstances exist, the FAA cannot proceed with the proposed action.

**19.4c.** For eligible wild, scenic, and recreational river areas not included in the NRI, the responsible FAA official should consider the potential effects on the river area.

**19.4d.** For Wild and Scenic Rivers, study rivers, NRI rivers under section 5(d)(1), and otherwise eligible rivers or river segments under section 5(d), the responsible FAA official must

obtain a section 7 determination that the proposed action will not have a direct and adverse effect on the values for which the river was or might be established or otherwise invade the river area, or for designated rivers, unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968.



## **APPENDIX B. FAA GUIDANCE ON THIRD PARTY CONTRACTING FOR EIS PREPARATION**

### **1. INTRODUCTION.**

**1a.** The Council on Environmental Quality (CEQ) regulation 40 CFR section 1506.5(c) states that any environmental impact statement (EIS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA) shall be prepared directly by a lead agency, upon request of the lead agency a cooperating agency, or a contractor selected by the lead agency.

**1b.** The intent of CEQ section 1506.5(c) is to avoid conflicts of interest by those preparing impact statements. Contractors must be able to sign a disclosure statement (see 40 CFR 1506.5(c))

**1c.** The following guidance is provided to ensure FAA's continued compliance with the CEQ regulations and NEPA.

### **2. GENERAL GUIDANCE.**

**2a.** The FAA must either prepare an EIS in-house (utilizing agency personnel and resources) or select a contractor to prepare the EIS. One method of selecting a contractor that may be used is known as "third party contracting."

**2b.** "Third party contracting" refers to the preparation of an EIS by a contractor selected by the FAA and under contract to and paid by an applicant (e.g., airport sponsor, applicant, air carrier). Through the statement of work, the contractor is responsible for assisting the FAA in preparing an EIS that meets the requirements of the NEPA regulations, the FAA's NEPA procedures, and all other appropriate Federal, State, and local laws. Since this process is purely voluntary, it is recommended that an agreement to use this process, establish a scope of work, and delineate the FAA contractor and applicant responsibilities be formalized by a Memorandum of Understanding (MOU) among the FAA contractor and the project proponent. In such situations, FAA retains oversight of the EIS. The CEQ recognizes the third party contracting arrangement as a legitimate method of EIS preparation in which the non-Federal applicant actually executes the contract and pays for the cost of preparing the EIS (see CEQ "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (46 FR 18026) and CEQ Guidance Regarding NEPA Regulations (48 FR 34263), available at <http://ceq.eh.doe.gov/nepa/regs/guidance.html>).

**2c.** The FAA's selection of a contractor under this process may be pursued by the FAA's evaluation of a preselection list ("short list") of contractors submitted to the FAA by an airport applicant based on the sponsor's request for proposal (RFP) and evaluation. The applicant may submit the list of candidates to the FAA ranked according to the sponsor's evaluation of the contractors qualifications. The FAA, however, is under no obligation to make a selection based

on this ranking. The applicant also may submit the list of candidates to the FAA in an unranked form.

**2d.** Costs for preparing the EIS are paid by the applicant. For airport development projects and related activities, EIS may be funded by either Airport Improvement Plan (AIP) funds or local funds including Passenger Facility Charge (PFC) revenues. While AIP funds may be used to pay for costs associated with EIS preparation by a contractor selected by the FAA, Federal procurement requirements do not apply. Federal agencies are permitted under 40 CFR Part 18 to substitute their judgment for that of the grantee (i.e., airport) if the matter is primarily a “Federal concern” (i.e., consultant selection by FAA to comply the requirement of CEQ section 1506.5(c) is a “Federal concern”).

**2e.** Guidance provided in the most current version of FAA Advisory Circular 150/5100-14, Architectural, Engineering and Planning Consultant Services for Airport Grants Projects, shall be followed in selecting a contractor for EIS preparation.

**2f.** When an EIS is prepared by a contractor, the FAA is still responsible for:

- (1) Obtaining a “disclosure statement” from the contractor,
- (2) Exercising oversight of the contractor to ensure that a conflict of interest does not exist,
- (3) Taking the lead in the scoping process,
- (4) Furnishing guidance and participating in the preparation of the EIS,
- (5) Independently evaluating the EIS and verifying environmental information provided by the applicant, or others, adding its expertise through review and revision, as necessary,
- (6) Approving the EIS, and
- (7) Taking responsibility for the scope and content of the EIS.

## APPENDIX C. RELATED EXECUTIVE ORDERS, DOT & FAA ORDERS, AND MEMORANDA/GUIDANCE

This appendix contains annotated lists of Executive Orders, FAA and DOT orders, memoranda, guidance, and FAA policies that are general in nature and do not apply specifically to any of the environmental areas discussed in Appendix A. The responsible FAA official should be familiar with these because their language or direction may affect the analysis and determinations made for the impacts of many types of actions.

Figure 1. Related Executive Orders

EXECUTIVE ORDERS	DESCRIPTION
Executive Order 11514, Protection and Enhancement of Environmental Quality, March 4, 1970, as amended by Executive Order 11991, May 24, 1977.	Orders all Federal agencies to "initiate measures needed to direct their policies, plans, and programs so they meet national environmental goals."
Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979.	Provides pertinent environmental considerations with respect to proposed actions outside the United States, its territories, and possessions (44 FR 18722, March 29, 1979).
Executive Order 12372, Intergovernmental Review of Federal Programs, July 14, 1982, and 49 CFR part 17, Intergovernmental Review of DOT Programs and Activities.	Requires Federal agencies to provide the opportunity for State and local elected officials to review and comment on Federal actions for Federal assistance or actions affecting them.
Executive Order 12866, Regulatory Planning and Review, and Presidential Memorandum, Plain Language in Government Writing, June 1, 1998.	Requires all Federal agencies to use plain language in all proposed and final rulemaking documents published in the Federal Register (63 FR 31885, June 10, 1998).
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.	Requires each Federal agency to identify and address disproportionately high and adverse effects of its programs, policies, and activities on the human health or environment of minority and low-income populations, including effects on subsistence patterns of consumption of fish, vegetation, or wildlife, and to ensure effective public participation and access to information (59 FR 7629, February 16, 1994).
Executive Order 12906, Coordinating Geographic Data Acquisition and Access: The National Spatial Data Infrastructure, April 11, 1994	Requires studies and geospatial data collected in the course of preparing an EA or EIS to conform to quality standards established under E.O. 12906 (59 FR 17671, April 13, 1994).
(more)	

Figure 1. Related Executive Orders (continued)

EXECUTIVE ORDERS	DESCRIPTION
Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks, April 21, 1997.	Requires agencies to ensure that its policies, programs, activities, and standards address disproportionate environmental health risks and safety risks to children, with specific additional requirements for rulemaking actions (62 FR 19885, April 23, 1997).
Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, November 6, 2000.	Requires agencies, in formulating policies significantly or uniquely affecting Tribes, to be guided, to the extent permitted by law, by principles of respect for Tribal self-government and sovereignty, for Tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Tribes. Requires Federal agencies to consult on a government-to-government basis with Tribes to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities (see 65 FR 67249, November 9, 2000).
Executive Order 13148, Greening the Government Through Leadership in Environmental Management, April 21, 2000	Each agency is responsible for ensuring that all necessary actions are taken to integrate environmental accountability into agency day-to-day decisionmaking and long-term planning processes, across all agency missions, activities, and functions.
(end of Figure 1)	

Figure 2. Related FAA and DOT Orders

FAA and DOT ORDERS	DESCRIPTION
FAA Order 5050.4A, Airport Environmental Handbook, October 8, 1985.	Provides guidance on meeting the requirements of NEPA and other Federal and Departmental environmental regulations for airport-related projects.
FAA Order 1100.154A, Delegation of Authority, June 1990.	Provides delegation of authority to agency officials to sign environmental documents.
Order DOT 5610.1C, Procedures for Considering Environmental Impacts, (44 FR 56420, October 1, 1979), and Order DOT 5610.1, Changes 1 & 2 (July 13, 1982 and July 30, 1985).	Provides guidelines for considering environmental impacts of transportation actions.
Order DOT 5610.2, Environmental Justice in Low-Income Populations and Minority Populations, April 15, 1997.	Requires FAA to follow specific procedures for analyzing environmental justice effects of proposed agency actions (62 FR 18377, April 15, 1997).
Order DOT 5301.1, Department of Transportation Programs, Policies and Procedures Affecting American Indian, Alaska Native, and Tribes; November 6, 1999	
FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures, January 28, 2004	Provides policy guidance to strengthen FAA's government-to-government relationship with Tribes, and the consultation framework to promote meaningful coordination.
(end of Figure 2)	

Figure 3. Related Memoranda &amp; Guidance

MEMORANDA & GUIDANCE	DESCRIPTION
CEQ Environmental Justice: Guidance Under the National Environmental Policy Act, December 10, 1997.	Provides guidance on integrating environmental justice considerations in NEPA analysis.
EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews, July 1999.	Describes EPA's approach to reviewing and commenting on environmental justice analyses in agency NEPA documents, as required under section 309 of the Clean Air Act.
Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, April 29, 1994.	Outlines principles for government-to-government consultation with Tribes (59 FR 22951, May 4, 1994).
CEQ Memorandum on Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, July 28, 1999.	Provides guidance on designating State, and local governments and Tribes as cooperating agencies.
CEQ Guidance on Considering Cumulative Effects Under the National Environmental Policy Act, January 1997.	Provides guidance for complying with the NEPA requirement to consider cumulative effects of the proposed action, that is, the incremental effects of the action when added to other past, present, and reasonably foreseeable future actions regardless of which agency (federal or non-federal) or person undertakes such other actions.
EPA Guidance on Consideration of Cumulative Impacts in EPA Review of NEPA Documents, May 1999.	Describes EPA's approach to reviewing and commenting on cumulative effects analyses in agency NEPA documents, as required under the Clean Air Act section 309.
(more)	

Figure 3. Related Memoranda &amp; Guidance (continued)

MEMORANDA & GUIDANCE	DESCRIPTION
Memorandum of Understanding (MOU) between the FAA and the Department of Defense, October 4, 2005.	Addresses environmental review for special use airspace actions.
Memorandum of Agreement (MOA) among Department of Defense, FAA, and the National Aeronautics and Space Administration on Federal Interaction with Launch Site Operators, August 21, 1997.	Addresses lead agency cooperation and responsibilities.
FAA Policy on Community Involvement, April 17, 1995, and FAA "Community Involvement Manual," August 1990.	Outlines the FAA's goals for community involvement and provides practical guidelines for involving the community in a variety of aviation planning situations.
Guidance - FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures; February 18, 2004	
(end of Figure 3)	

## **APPENDIX D ENVIRONMENTAL STEWARDSHIP AND STREAMLINING VISION 100 -- CENTURY OF AVIATION REAUTHORIZATION ACT**

### **1. INTRODUCTION.**

**a.** Title III of Vision 100, signed into law by the President on December 12, 2003, is also cited as the “Aviation Streamlining Approval Process Act of 2003.” In Title III, Congress found that the Federal Aviation Administration (FAA), airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.

**b.** The Act directs the Secretary of Transportation to develop and implement an expedited and coordinated environmental review process for airport capacity projects at congested airports, aviation safety projects, and aviation security projects.

**2. FAA POLICY.** The FAA will adhere to the high standards of environmental review described in this Order for projects subject to environmental streamlining. The FAA will comply with all environmental protection requirements, maintain the integrity of the environmental process, and respect the environmental responsibilities of other agencies. Environmental streamlining will be used to give review priority to certain projects, manage timelines during the review process, improve and expedite interagency coordination, reduce undue delays, and emphasize accountability.

**3. RELATIONSHIP TO OTHER REQUIREMENTS.** The specific provisions in the Act on how the Secretary shall accomplish this mandate are consistent with DOT/FAA responsibilities under the National Environmental Policy Act (NEPA) and other environmental laws, as described in this Order. Nothing in the Act changes the FAA’s environmental obligations or the practice of seeking public comment. The Act supplements Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, and FAA administrative streamlining practices. The Transportation Infrastructure Streamlining Task Force established by Executive Order 13274 may monitor airport projects that are subject to the coordinated and expedited review process under the Act.

**4. PROJECTS SUBJECT TO STREAMLINING IN VISION 100.** Three categories of aviation projects are subject to the Act’s streamlining provisions -- (1) airport capacity projects at congested airports, (2) aviation safety projects, and (3) aviation security projects.

**a Airport capacity project at a congested airport.** An airport capacity project is a project for the construction or extension of a runway (including any land acquisition, taxiway, or safety area associated with the runway or runway extension) and other airport development projects that the Secretary of Transportation may designate as facilitating a reduction in air traffic congestion and delays. A congested airport is an airport that accounted for at least 1 percent of all delayed aircraft operations in the U.S. in the most recent year for which data is available, and an airport listed in table 1 of the FAA’s Airport Capacity Benchmark Report 2001.



**b. Aviation safety project.** This is an aviation project that has as its primary purpose reducing the risk of injury to persons or damage to aircraft and property, as determined by the FAA Administrator, and is either needed to respond to a recommendation from the National Transportation Safety Board as determined by the Administrator, or is necessary for an airport to comply with 14 CFR part 139 relating to airport certification.

**c. Aviation security project.** This is a security project at an airport that is required by the Department of Homeland Security.

**5. PROJECT DESIGNATION.** The Act distinguishes in certain respects the designation of an airport capacity project at a congested airport from the designation of an aviation safety or security project for coordinated and expedited review under the Act. Projects may be designated that require the preparation of an EA, as well as those that require an EIS. In making a designation, the Administrator may consult with the Department of Homeland Security and any Federal or State agency that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

**a. Airport capacity project at a congested airport.** Airport capacity projects at congested airports are more definitively defined in the Act than aviation safety and security projects. Airport capacity projects at congested airports are required to be subject to the coordinated and expedited environmental review process set forth in the Act. The Act states that its provisions shall apply to an airport capacity project at a congested airport whether or not the project is designated by the Secretary of Transportation as a high priority transportation infrastructure project under Executive Order 13274. The FAA Associate Administrator for Airports has the responsibility for designating runway construction and extension projects, consistent with the definition in the Act, and for recommending other projects for designation by the Secretary or his designee.

**b. Aviation safety or security project.** The FAA Administrator has the discretion to designate or not designate an aviation safety or security project. The Administrator may not delegate this authority. Once a project designation is made, the project shall be subject to the coordinated and expedited environmental review process set forth in the Act. The Administrator's designation is subject to the consideration of the following guidelines --

- (1) the importance or urgency of the project;
- (2) the potential for undertaking the environmental review under existing emergency procedures under the National Environmental Policy Act;
- (3) the need for cooperation and concurrent reviews by other Federal or State agencies;
- (4) the prospect for undue delay if the project is not designated for priority review; and
- (5) for aviation security projects, the views of the Department of Homeland Security.

**c.** The FAA Associate Administrator with the lead responsibility may recommend the designation of projects that meet the Act's definitions of aviation safety and security projects,

subject to the above guidelines. The recommending office will forward its documentation to the Office of Environment and Energy (AEE). AEE will be responsible for the uniform interpretation and application of the guidelines and will review each recommended designation and provide advice on project designation to the recommending office and the Administrator. The FAA may receive recommendations for project designation from the Department of Homeland Security. These recommendations will be subject to the same FAA internal review procedures.

**6. COORDINATED AND EXPEDITED ENVIRONMENTAL REVIEW PROCESS.** For each project that has been designated for the coordinated and expedited environmental review process under the Act, the provisions below apply. It is the responsibility of the FAA office that has the prime responsibility for the proposed Federal action and is leading the environmental review to apply the provisions within the purview of the FAA to specific projects.

**a. Identification of Federal and State Jurisdictional Agencies.** The FAA will identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

**b. Federal and State Agency Participation.** Each identified Federal agency is required to put mechanisms in place to enable the agency to participate in the coordinated review process and to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals in a timely and environmentally responsible manner. State agency participation is at the discretion of the Governor of the State in which the project is located. A Governor, consistent with State law, may choose to participate in the coordinated review process and provide that all identified State agencies will be subject to the process.

**c. Coordinated and Expedited Review Process.** The Act directs the Secretary to develop and implement a coordinated and expedited environmental review process for designated projects. This review process is to provide for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of EIS's or EA's. It is to provide for all project environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor, or by a participating State agency, to be conducted concurrently to the maximum extent practicable and to be completed within a time period established by the Secretary. Additional factors that are included within the Act's provisions to support and enhance a coordinated and expedited environmental review process are described below. The FAA may supplement these with measures that are considered to be best practices, consistent with environmental laws, regulations, and policies.

**d. High Priority for Environmental Reviews.** Each Federal agency is directed to give the highest possible priority to projects designated for coordinated review under the Act and to conduct their review, analysis, opinion, permit, license, or approval functions expeditiously. Participating State agencies are expected to perform similarly.

**e. Memorandum of Understanding.** The coordinated review process may be incorporated into a memorandum of understanding between the FAA and other participating Federal and State agencies and, if applicable, the airport sponsor. The use of a memorandum of understanding is discretionary, rather than required.

**f. Interagency Environmental Impact Statement Teams.** The FAA may, but is not required to, use an interagency EIS team to coordinate and expedite the environmental review process and to assist the FAA in preparing the EIS. If using an EIS team, FAA is required to invite Federal and State agencies and tribes with jurisdiction by law to participate on the team. Agencies with expertise may also be invited. In order to facilitate timely and efficient environmental review, team members shall agree on agency or Tribal points of contact, protocols for communication among agencies, and deadlines for necessary actions by each individual agency (including the review of environmental analyses, the conduct of required consultation and coordination, and the issuance of environmental opinions, licenses, permits, and approvals). The team members may formalize their agreement in a written memorandum.

**g. Lead Agency Responsibility.** The Act identifies FAA as the lead agency for projects designated for the coordinated and expedited environmental review process, and specifies that the FAA shall be responsible for defining the scope and content of EIS's, consistent with CEQ regulations. The Act further provides that any other Federal or State agency that is participating in the coordinated environmental review process shall give substantial deference, to the extent consistent with applicable law and policy, to the aviation expertise of the FAA. It is FAA's continuing responsibility to assure the integrity of aviation data used for environmental analyses and agency decision making.

**h. Purpose and Need.** For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in the coordinated environmental review process and that requires an analysis of the purpose and need for a project, the Act provides that the agency shall be bound by the project purpose and need as defined by the Secretary, notwithstanding any other provision of law. The Act requires the Secretary to solicit and consider comments on project purpose and need from interested persons and governmental entities in accordance with NEPA. This may be accomplished through normal NEPA procedures for public and agency review. This provision of law does not change FAA's responsibilities described in this Order with respect to determining the purpose and need for a project. FAA will cooperatively review proposed project purpose and need statements with other agencies that have jurisdiction and decision making roles and will attempt to accommodate other agency needs, consistent with CEQ regulations and guidance, FAA program responsibility, and FAA substantive expertise on aviation proposals.

**i. Alternatives Analysis.** Similar to the provision on project purpose and need, the Act authorizes the Secretary to determine the reasonable alternatives to a project designated for the coordinated environmental review process. Any other Federal or State agency that is participating in the coordinated environmental review process shall consider only those alternatives to the project that the Secretary has determined are reasonable. The remainder of the guidance above on project purpose and need is also applicable to alternatives analysis with respect to the solicitation and consideration of comments, use of normal NEPA procedures,

compliance with the provisions of this Order, and consultation and cooperation with other agencies.

**j. Reporting and Remedying Failure to Meet Project Deadline.** The FAA will report to the Office of the Secretary if a Federal agency, State agency, or airport sponsor that is participating in the coordinated environmental review process has not met a deadline established for the project for an environmental review, analysis, opinion, permit, license, or approval. The Act directs the Secretary to notify, within 30 days of making a determination on such a missed deadline, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Transportation and Infrastructure, CEQ, and the agency or sponsor involved about the failure to meet the deadline. The Act further directs, not later than 30 days after the receipt of such a notice, the agency or sponsor involved to submit a report to the Secretary, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Transportation and Infrastructure, and CEQ that explains why the agency or sponsor did not meet the deadline and describes actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval. The FAA will make every effort to assist participants in the coordinated environmental review process to meet deadlines, or to remedy missed deadlines as rapidly as possible.

**7. OTHER PROVISIONS.** Vision 100 includes others provisions that may assist in facilitating the timeliness and completion of environmental reviews.

**a. Airport Funding of FAA Staff and Consultants.** The FAA Administrator may accept funds from an airport sponsor, including funds provided to the sponsor under the AIP program, to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project. The Office of Airport Planning and Programming is responsible for guidance and funding arrangements for reimbursable agreements.

**b. Air Traffic Procedures for Airport Capacity Projects at Congested Airports.** During the environmental planning process, FAA may consider flight procedures to avoid or minimize significant noise impacts of an airport capacity project at a congested airport that involves the construction of new runways or the reconfiguration of existing runways. If the Administrator determines that noise mitigation flight procedures are consistent with the safe and efficient use of the navigable airspace, the Administrator may commit, at the request of the airport sponsor and in a manner consistent with applicable Federal law, to prescribing the procedures in any Record of Decision approving the project. The Air Traffic Organization is the responsible FAA office for developing and approving noise mitigation flight procedures.

**c. Flexible Funding of Noise Mitigation for Airport Capacity Projects and Other Airport Development Projects.** The delivery of Airport Improvement Program (AIP) funding for noise mitigation can be enhanced and expedited by provisions in the Act that allow funding from the AIP noise set-aside for mitigation in FAA Records of Decision without additional approval under 14 CFR part 150. The Office of Airport Planning and Programming is responsible for AIP funding guidance.

**d. Voluntary Air Quality Initiatives.** The Act provides funding and emission credit incentives for commercial service airports in air quality nonattainment and maintenance areas to reduce airport ground emissions on a voluntary basis. While the purpose of these initiatives is not a streamlining one, emission credits that are granted to airports under this program may be used for current or future general conformity determinations under the Clean Air Act or as offsets under EPA's new source review program for projects on the airport or associated with the airport. Such provisions may reduce delays in complying with air quality requirements during environmental reviews. FAA and EPA are jointly responsible for issuing guidance for the air quality initiatives. Within FAA, the Office of Airport Planning and Programming is the responsible office.

**e. Elimination of Duplication in Air and Water Quality Certification.** A provision dating from 1970 to assure air and water quality protection by receiving a certification from the Governor of a state for certain major airport development projects has been eliminated. It is no longer necessary in view of protections in the Clean Air Act and Clean Water Act.

**f. Issuance of FAA Environmental Guidance.** The Act directs the Secretary to publish the final version of this Order no later than 180 days after enactment of the Act and, within an additional 180 days, to publish for public comment the revised FAA Order 5050.4B, Airport Environmental Handbook. Most of the projects that are subject to the streamlining provisions of the Act, and those that are of the greatest interest and concern, are airport capacity projects. FAA Order 5050.4B will include details on streamlining airport capacity project reviews.

## APPENDIX E. LIST OF ACRONYMS

AAF	-	Airway Facilities Service
AAIA	-	Airport and Airway Improvement Act
AAT	-	Air Traffic Service
ABA	-	Assistant Administrator for Financial Services
ABU	-	Office of Budget
AC	-	Advisory Circular
ACHP	-	Advisory Council on Historic Preservation
ACR	-	Office of Civil Rights
ACS	-	Associate Administrator for Civil Aviation Security
ACT	-	Director, William J. Hughes Technical Center
AD	-	Airworthiness Directive
ADIZ	-	Air Defense Identification Zone
AEE	-	Office of Environment and Energy
AEE-200	-	Environment, Energy & Employee Safety Division
AEM	-	Area Equivalent Method
AEP	-	Assistant Administrator for Aviation Policy, Planning and Environment
AFS	-	Airway Facilities Service
AGC	-	Office of the Chief Counsel
AGC-620	-	Environmental Law Branch
AGL	-	Above Ground Level
AHM	-	Center for Management Development
AHR	-	Assistant Administrator for Human Resource Management
AHT	-	Office of Learning and Development
AIP	-	Airport Improvement Program
AIRFA	-	American Indian Religious Freedom Act
ALP	-	Airport Layout Plan
ALS	-	Approach Lighting System
AMA	-	FAA Academy
AMC	-	Mike Monroney Aeronautical Center
AND	-	Office of Communication, Navigation, and Surveillance Systems
ANI	-	National Airspace System Implementation Program
ANR	-	Program Director for Surveillance
ANSI	-	American National Standards Institute
AOP	-	NAS Operations
APE	-	Area of Potential Effect
API	-	Assistant Administrator for International Aviation
APP-600	-	Community and Environmental Needs Division
ARA	-	Associate Administrator for Research and Acquisitions
ARC	-	Associate Administrator for Region and Center Operations
ARM	-	Office of Rulemaking
ARP	-	Associate Administrator for Airports
ARPA	-	Archeological Resources Protection Act

ARSR	-	Air Route Surveillance Radar
ARTCC	-	Air Route Traffic Control Center
ASD	-	Office of Systems Architecture and Investment Analysis
ASDE	-	Airport Surface Detection Equipment
ASE	-	NAS Systems Engineering Service
ASM	-	Systems Maintenance Service
ASR	-	Airport Surveillance Radar
AST	-	Associate Administrator for Commercial Space Transportation
AST	-	Above Ground Storage Tank
ASU	-	Office of Acquisitions
ATA-300	-	Environmental Programs Division
ATC	-	Air Traffic Control
ATCBI	-	Air Traffic Control Beacon Interrogator
ATCT	-	Air Traffic Control Tower
ATNS	-	Air Traffic Noise Screening Procedure
ATO	-	Air traffic Organization
ATS	-	Associate Administrator for Air Traffic Services
AVR	-	Associate Administrator for Regulation and Certification
AVN	-	Aviation System Standards
AWOS	-	Automated Weather Observing System
BA	-	Biological Assessment
BLM	-	Bureau of Land Management
C-1	-	Office of the General Counsel
CAA	-	Clean Air Act
CBRA	-	Coastal Barriers Resources Act
CE	-	Categorical Exclusion
CEQ	-	Council on Environmental Quality
CERCLA	-	Comprehensive Environmental Response, Compensation and Liability Act
CFR	-	Code of Federal Regulations
CNEL	-	Community Noise Equivalent Level
CO	-	Carbon Monoxide
COE	-	Corps of Engineers
CWA	-	Clean Water Act
CZM	-	Coastal Zone Management
CZMA	-	Coastal Zone Management Act
DARC	-	Direct Access Radar Channel
dB	-	Decibel
DEIS	-	Draft Environmental Impact Statement
DER	-	Designated Engineering Representative
DNL or L <sub>dn</sub>	-	Day Night Average Sound Level
DOA	-	Department of Agriculture
DOC	-	Department of Commerce
DOD	-	Department of Defense
DOE	-	Department of Energy
DOI	-	Department of Interior
DOT	-	Department of Transportation

DVOR	-	Doppler Very High Frequency Omnidirectional Range
EA	-	Environmental Assessment
EC	-	Environmental Concerns
EDDA	-	Environmental Due Diligence Audit
EDMS	-	Emissions and Dispersion Modeling System
EIS	-	Environmental Impact Statement
E.O.	-	Executive Order
EPA	-	U.S. Environmental Protection Agency
ER	-	Environmental Reservations
ESA	-	Endangered Species Act
EU	-	Environmentally Unsatisfactory
F&E	-	Facilities and Equipment
FAA	-	Federal Aviation Administration
FEIS	-	Final Environmental Impact Statement
FEMA	-	Federal Emergency Management Agency
FFCA	-	Federal Facility Compliance Act of 1992
FHWA	-	Federal Highway Administration
FICON	-	Federal Interagency Committee on Noise
FIP	-	Federal Implementation Plan
FMS	-	Flight Management System
FONSI	-	Finding of No Significant Impact
FPO	-	Federal Preservation Officer
FPPA	-	Farmland Protection Policy Act
FR	-	Federal Register
FSS	-	Flight Service Station
FWS	-	Fish and Wildlife Service
GA	-	General Aviation
GIS	-	Geographic Information System
GPS	-	Global Positioning System
GSA	-	General Services Administration
HNM	-	Heliport Noise Model
HUD	-	Department of Housing and Urban Development
IEEE	-	Institute of Electrical and Electronics Engineers
ILS	-	Instrument Landing System
INM	-	Integrated Noise Model
ISR	-	Indirect Source Review Liability Act
LAAS	-	Local Area Augmentation System
LEIS	-	Legislative Environmental Impact Statement
LLWAS	-	Low Level Wind Shear Alert System
Lmax	-	Maximum Noise Level
LO	-	Lack of Objections
LOU	-	Letter of Understanding
LV	-	Launch Vehicle
MALSR	-	Medium Intensity Approach Lighting System with Runway Alignment Light System
MERF	-	Mobile Emergency Radar Facilities



MLS	-	Microwave Landing System
MOA	-	Memorandum of Agreement
MOU	-	Memorandum of Understanding
MSL	-	Mean Sea Level
NAAQS	-	National Ambient Air Quality Standard
NAGPRA	-	National American Graves Protection and Repatriation Act
NAS	-	National Airspace System
NATHPO	-	National Association of Tribal Historic Preservation Officers
NAVAIDS	-	Air Navigation Facility
NCA	-	Noise Control Act of 1972
NCP	-	Noise Compatibility Program
NCRP	-	National Center for Recreation and Conservation
NCSHPO	-	National Conference of State Historic Preservation Officers
NEF	-	Noise Exposure Forecast
NEPA	-	National Environmental Policy Act
NEXRAD	-	Next Generation Radar
NHPA	-	National Historic Preservation Act
NLR	-	Noise Level Reduction
NMFS	-	National Marine Fisheries Service
NOA	-	Notice of Availability
NOAA	-	National Oceanic and Atmospheric Administration
NOI	-	Notice of Intent
NOTAMS	-	Issuance of Notices to Airmen
NO <sub>x</sub>	-	Oxides of Nitrogen
NPDES	-	National Pollutant Discharge Elimination System
NPIAS	-	National Plan of Integrated Airport Systems
NPL	-	National Priorities List
NPRM	-	Notice of Proposed Rulemaking
NPS	-	National Park Service
NRC	-	National Response Center
NRCS		Natural Resources Conservation Service
NRHP		National Register of Historic Places
NRI		Nationwide Rivers Inventory
NWP		Nationwide Permit Program
ODALS	-	Omnidirectional Approach Lighting System
OFA		Office of Federal Activities
OMB		Office of Management and Budget
P-1		Office of the Assistant Secretary for Transportation Policy
P-130		Environmental Policies Team
PA		Programmatic Agreement
PAD		Preparing Agreement Documents
PAPI		Precision Approach Path Indicator
PCB		Polychlorinated Biphenyls
PFC		Passenger Facility Charge
P.L.		Public Law
PRM		Precision Runway Monitor

PVD		Plan View Displays
RBDE		Radar Brite Display Equipment
RCAG	-	Remote Center Air/Ground Communications Facility
RCO	-	Remote Communications Outlet
RCRA	-	Resource Conservation and Recovery Act of 1976
RE&D	-	Research, Engineering & Development
REIL	-	Runway End Identifier Lights
RFP	-	Request for Proposal
RML	-	Radar Microwave Link
ROD	-	Record of Decision
RTCA	-	River and Trail Conservation Assistance Program
RT/R	-	Remote Transmitter/Receiver
RVR	-	Runway Visual Range
SARA	-	Superfund Amendments and Reauthorization Act of 1986
SAWS	-	Stand Alone Weather Sensors
SCS	-	Soil Conservation Service
SDWA	-	Safe Drinking Water Act
SEL	-	Sound Exposure Level
SHPO	-	State Historic Preservation Officer
SIP	-	State Implementation Plan
SPL	-	Sound Pressure Level
SSALSR	-	Simplified Shortened Approach Lighting System with Runway Alignment Indicator Light System
SUA	-	Special Use Airspace
SWDA	-	Solid Waste Disposal Act of 1980
SWMU	-	Solid Waste Management Unit
TA	-	Time Above
TACAN	-	Ultra-High Frequency Tactical Air Navigation Aid
TCP	-	Traditional Cultural Place
TDWR	-	Terminal Doppler Weather Radar
THPO	-	Tribal Historic Preservation Officer
TRACON	-	Terminal Radar Approach Control
TSCA	-	Toxic Substances Control Act of 1976, as amended
TSO	-	Technical Standard Order
U.S.C.	-	United States Code
USCG	-	United States Coast Guard
USDA	-	U.S. Department of Agriculture
UST	-	Underground Storage Tank
VASI	-	Visual Approach Slope Indicator
VHF	-	Very High Frequency
VOR	-	VHF Omnidirectional Range
VORTAC	-	(See VOR and TACAN)
VOT	-	VOR Test Facility
WAAS	-	Wide Area Augmentation System
WQC	-	Water Quality Certificate



**U.S. DEPARTMENT OF TRANSPORTATION**  
FEDERAL AVIATION ADMINISTRATION  
National Policy

**ORDER**  
**1050.1E,**  
**CHG 1**

Effective Date:  
March 20, 2006

**SUBJ: Environmental Impacts: Policies and Procedures**

1. **PURPOSE.** This change transmits revised pages to Chapters 3,4,5, Appendix A and Appendix C of FAA Order 1050.1E, CHG 1.
2. **DISTRIBUTION.** This change will be electronically distributed within the FAA and made available to the public via the Internet at [http://www.faa.gov/regulations\\_policies/orders\\_notices](http://www.faa.gov/regulations_policies/orders_notices).
3. **EXPLANATION OF CHANGES.** This order revises the FAA agency-wide policies and procedures for compliance with the National Environmental Policy Act (NEPA) and implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500-1508). This revision includes changes for clarification; changes for consistency; a change for addition of information; corrections; and editorial changes.
4. **DISPOSITION OF TRANSMITTAL.** This transmittal is to be **RETAINED AND FILED IN THE BACK OF THIS HANDBOOK** until it is superseded by a new basic order.

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Carl Burleson  
Director, Office of Environment and Energy  
Federal Aviation Administration