CHAPTER 9. THE ENVIRONMENTAL IMPACT STATEMENT (EIS), SCOPING, AND COOPERATING AGENCIES

900. EIS PURPOSE. Text at 40 CFR 1502.1 states an EIS's primary purpose is to be an "action-forcing tool" to ensure Federal government programs and actions meet NEPA's goals and policies. The EIS allows the agency to take a "hard look" at the environmental impacts the no action, the proposed action, and its reasonable alternatives would cause.

901 . EIS CONTENT. An EIS describes and discusses the significant environmental impacts the no action, proposed action, and its reasonable alternatives would cause. To do this, the responsible FAA official must use an interdisciplinary approach integrating natural and social sciences and environmental design arts (40 CFR 1502.6). An EIS must be a concise, comprehensive document (40 CFR 1502.8). It should be plainly written to allow people unfamiliar with an action and its reasonable alternatives to understand the environmental issues concerning the public, alternative ways to achieve the purpose and need, and the environmental impacts associated with those alternatives.

902. FAA'S LEAD AGENCY RESPONSIBILITIES. FAA is the lead Federal agency for most proposed airport actions. In general, FAA officials are responsible for preparing EISs addressing those actions.

    a. EIS content. These officials must ensure the EISs properly analyze and disclose potential significant individual and cumulative environmental impacts proposed airport actions and their reasonable alternatives would cause. They also ensure EISs clearly present the information needed for the public to understand the proposed action, its reasonable alternatives, and the potential environmental effects the action and its reasonable alternatives would cause.

    b. EIS schedule. Further, at the airports sponsor's request, the responsible FAA officials should consult with interested parties and FAA organizations involved in the proposed action, to develop realistic EIS preparation schedules.

        (1) These schedules are based on an action's complexities and the complexities of the necessary environmental analyses. But, even when thoughtfully developed, events beyond FAA's control can occur that would alter the proposed schedules. Therefore, airport sponsors and other interested parties should acknowledge that such events do occur, and that FAA officials need the flexibility to respond to those events. As needed, responsible FAA officials should exercise discretion to address unforeseen events by lengthening or shortening schedules as appropriate.

        (2) Chapter 5 of this Order discusses the linkage between airport planning and the NEPA. It discusses how sponsors who responsibly plan their project improve FAA's ability to meet project schedules.

Note: Other paragraphs in this chapter discuss FAA EIS responsibilities in detail.

903.   AIRPORT ACTIONS NORMALLY REQUIRING AN EISs. FAA normally prepares EISs for the following airport actions.

     a.   An environmental assessment signaling a significant impact. The responsible FAA official prepares an EIS after reviewing an EA that indicates that proposed mitigation would not reduce the action's environmental impacts below significant impact thresholds.

     b.   EISs without EAs. If a responsible FAA official reviews a proposed airport action and finds it is likely to cause significant impacts, the official may start the EIS process. This approach saves time because FAA begins the EIS instead of the sponsor preparing an EA. FAA experience shows the following airport actions normally require an EIS.

     (1) A new commercial service airport in a Metropolitan Statistical Area (MSA). [1] Unconditionally approving or Federally funding the first Airport Layout Plan or airport location for a new commercial service in an MSA. or

     (2) A new runway in an MSA. Unconditionally approving or Federally funding a new runway to accommodate air carrier aircraft at a commercial service airport located in an MSA.

     c. Exceptions to paragraph 903.b. Although paragraph 903.b lists those airport actions normally requiring EISs, FAA need not prepare EISs for these actions in all cases. FAA need not prepare an EIS when the responsible FAA official and approving FAA official determine that a sponsor-prepared EA adequately supports a finding that these proposed actions would not cause significant environmental impacts. Also, FAA may stop its EIS preparation when further analyses indicate the action would not cause significant environmental effects (40 CFR 1501.7(c)).

904.   STARTING THE EIS. For airport actions, FAA is normally the lead agency. Therefore, FAA is responsible for preparing EISs for those projects or actions (40 CFR 1508.16).

     a.   Early application of NEPA. As discussed in detail in Chapter 5, FAA should consult with airport sponsors to ensure the sponsors begin environmental studies at an early stage in the planning process so environmental factors can be considered (40 CFR §1501.2, of CEQ's *Forty Most Asked Question Concerning CEQ's National Environmental Policy Act Regulations*, Question # 8). When FAA expects to require the airport sponsor to file environmental data for possible use in preparing the EIS, FAA will aid the sponsor by outlining the types of information required (40 CFR 1506.5).

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[1] A metropolitan statistical area is a core area containing a substantial population nucleus and those adjacent communities having a high degree of economic and social integration with that core (Census Bureau).

b. EIS timing. When a proposed airport action warrants an EIS, the responsible FAA official should begin preparing the EIS as soon as possible after the airport sponsor presents its proposal to FAA (40 CFR 1502.5).

(1) When a proposal exists. In determining whether a proposal exists, FAA will consider whether the sponsor provided sufficient planning data or information to meaningfully evaluate alternatives and their potential environmental effects (40 CFR 1508.23). During the past decade, ARP has found that a lack of well-conceived and well-developed airport planning information or failure to resolve planning issues have caused substantial delays in the NEPA process. Many times these delays were not NEPA-related, but were due to a lack of good planning data. This lack of data severely hampered FAA's ability to meaningfully evaluate project impacts and prepare the EIS.

Note: Chapter 5 discusses the need to integrate NEPA and airport planning.

(2) Good planning data. As discussed in Chapter 5, good planning data are essential to begin and properly scope an EIS because they allow FAA to:

(a) Define a purpose and need.

(b) Preliminarily identify obvious sensitive environmental resources in the area surrounding the airport.

(c) Preliminarily identify environmental impacts to those resources due to carrying out the proposal and its alternatives. and

(d) Prepare a preliminary list of permits or other authorizations that may be needed to carry out the proposal or its alternatives.

c. EIS topics. Each EIS must provide a full, fair discussion of significant environmental issues a proposed action and its reasonable alternatives would cause. It must also address issues of interest to affected parties (40 CFR 1502.1). This ensures decisionmakers and the public know about reasonable alternatives that would avoid or minimize those impacts or enhance environmental quality.

d. EIS schedule. If the airport sponsor requests a schedule for completing the EIS, then the responsible FAA official should set time limits that are appropriate to the proposed action, considering complexity and analytical requirements, the purposes of NEPA, and other important national policies (40 CFR 1501.8). Review paragraphs 902.b(1) and (2) for more information.

905. SCOPING. Scoping is very useful in completing the duties this chapter discusses; therefore, it is a critical part of the EIS process. Agency officials use this open

process to determine the array of important issues an agency's EIS will address (40 CFR 1501.7).[2] In summary, scoping:

>   **a.** Helps to identify potentially significant environmental impacts related to a proposed action and its reasonable alternatives.

>   **b.** Specifies the roles, duties, and information FAA expects the cooperating agency to provide throughout the environmental review process. and

>   **c.** Helps to set the bounds for cumulative effects analysis (see paragraph 1004.i of this Order) because information exchanged during scoping often highlights past, present, and reasonably foreseeable actions in the project area. It also helps to identify connected actions and similar actions the EIS may need to address.

>>   **(1) Connected actions.** These are actions that are closely related to the proposed action and should be discussed in the same EIS. These actions:

>>>   **(a)** May automatically trigger other actions requiring EAs or EIS.

>>>   **(b)** Cannot or will not occur unless other actions occur at the same time or earlier. and

>>>   **(c)** Are independent parts of a large action but depend on the larger action for justification.

>>   **(2) Similar actions.** These are actions, that when viewed with other reasonably foreseeable actions, have similarities that provide the basis for evaluating their total environmental consequences. Normally, these actions have common timing or geography**.**

>   **d.** Builds confidence, trust, and a solid working relationship among interested parties.

>   **e.** Helps to educate interested parties and reduce conflicts or misunderstandings that may occur among them. and

>   **f.** Helps to ensure FAA's NEPA effort will focus on and address environmental concerns of most importance to agency and public.

906.   WAYS TO ENHANCE SUCCESSFUL SCOPING. Effective scoping ensures an EIS addresses key issues concerning the public, governmental agencies, and Tribes. Scoping is not just one meeting or one information gathering effort. Scoping is a continuous process that begins soon after FAA publishes its "Notice of Intent to prepare an EIS" in the *Federal Register* (see paragraph 907.b). Scoping encourages resource

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[2] CEQ's April 30, 1981, *Memorandum on Scoping Guidance.*

agencies and the interested public to present their ideas, alternatives, and concerns before EIS preparation begins. Early identification of issues and potential impacts is critical to efficient, effective EIS preparation. This effort focuses EIS preparers on the significant issues the EIS will analyze (40 CFR 1501.7(a)(2)). As the lead Federal agency for most airport actions, FAA is responsible for completing the scoping process.

      a. Scoping goals. To enhance EIS preparation and content:

        (1) Clarify legal responsibilities. This helps ensure the EIS identifies all necessary permits, licenses, approvals, or authorizations and information needed to obtain them.

        (2) Clarify areas of special expertise. This helps ensure the EIS addresses each expertise agency's concerns, consultation requirements, and data needs.

        (3) Invite other agencies with jurisdiction by law or having special expertise to participate in scoping and the EIS process as cooperating agencies. Before beginning EIS preparation, the agency official should decide which agencies would be cooperating agencies. The official should make this decision based on each agency's jurisdiction by law or special expertise regarding affected environmental resources. This cooperating agency effort enhances information exchanges, document preparation, and eventual agency decision making, especially for resources of particular concern to other agencies or that involve special purpose laws.

        (4) Provide proposed procedures for overseeing EIS progress. This includes describing coordination efforts designed to avoid unnecessary delays, duplication, and misunderstanding among parties. Lead agency oversight includes assigning responsibilities for preparing EIS sections to cooperating agencies.

        (5) Give cooperating agencies opportunities to review their roles. Each lead agency expects each cooperating agency to fulfill important roles during EIS preparation. Therefore, before beginning this preparation, the lead agency should define each cooperating agency's respective responsibilities. Completing a Memorandum of Understanding (MOU) often helps to do so. The MOU is a good way to ensure the lead and cooperating agencies:

        (a) Thoroughly understand and agree on their duties and responsibilities for EIS input and reviewing the EIS.

        (b) Ensure the agencies focus on issues of concern to them.

        (c) Understand the need for timely, complete, and clearly written input.

        (d) Understand how the agencies will resolve issues that may arise and the timelines to do so.

(6) Give the public opportunities to provide input and concerns. This ensures the agency responsible for preparing the EIS is aware of the major issues concerning the public about the proposed action.

b. Scoping techniques. Scoping should be a continuous, candid, and focused process. The participants should exchange ideas openly. They should present recommendations to change designs and reduce environmental impacts and to thoroughly address any controversial actions. Focus scoping on the following issues as needed:

(1) The sponsor's proposals to solve the problems it is facing.

(2) Reasonable alternatives that could help the sponsor solve its problems.

(3) Design constraints considered when developing those alternatives.

(4) Potential impacts to human and natural environments.

(5) Possible measures to limit or mitigate those impacts.

c. Preparing for scoping. When preparing for scoping, a comprehensive, clearly written package helps all scoping participants understand the project and subsequent NEPA process. The package should include information about the project, the EIS process, the lead agency's role in that process, and the decision making process that agency will complete for the proposed action. This allows interested parties to provide informed contributions during the scoping process' open discussions. The scoping package should:

(1) Briefly describe the scoping's purpose and procedures.

(2) Briefly describe the proposed action.

(3) Provide a preliminary list of alternatives and impacts.

(4) Make available any maps, drawings, or references that may aid the public in understanding the proposed action. and

(5) Clearly state that the lead agency has not made a final decision on the EIS's content.

d. Using an existing EA for information. When developing scoping information, the lead agency may use an available EA as a reference. However, if an EA is more than 3 years old, ensure the EA's information remains valid (see paragraph 1401 of this Order).

(1) As appropriate, the agency official may discuss the reasonable alternatives the EA contains. If the lead agency plans to delete one of those alternatives, the

responsible FAA official should consult the airport sponsor before doing so. When deleting an alternative, the official should note that fact during scoping and briefly explain why the alternative is no longer reasonable. Officials should note that they may increase the range of alternatives the EIS would address to ensure the EIS presents an array of reasonable alternatives that suits the action's complexity and meets NEPA requirements.

(2) The agency official should review the EA's Environmental Consequences section. This review helps the official set up a starting point for EIS scoping on possible project impacts. This review should compare the impacts the previous EA contains to the significant impact thresholds (Table 7-1 of this Order) for each resource the proposed action and its reasonable alternatives would affect. For those resources not significantly affected, the agency official may use that information to support reasons the EIS need not discuss those effects in detail.

(3) The EA often provides information about an approved action and the past, present, and reasonably foreseeable actions considered in the EA's cumulative analysis section. That information is helpful in EIS scoping potential cumulative impacts.

e. **When no EA is available.** When an EA is not available, the lead agency's scoping package should:

(1) Describe the proposed action and reasonable alternatives.

(2) Summarize possible environmental impacts that the proposed action and the reasonable alternatives could cause.

(3) Contain maps or drawings depicting the proposed action and its alternatives. and

(4) Contain any other reference material that would improve a layperson's understanding of the proposed action and its reasonable alternatives.

907.   SCOPING AND THE TIMING OF THE NOTICE OF INTENT (NOI) TO PREPARE AN EIS.

a. **NOI timing.** To comply with 40 CFR 1501.7, the responsible FAA official must prepare and publish the NOI in the *Federal Register* as soon as practicable after the FAA decides to prepare an EIS.

b. **Scoping's timing.** <u>Before</u> conducting scoping, 40 CFR 1501.7 requires the lead agency to publish a "Notice of Intent to Prepare an EIS" (NOI) in the *Federal Register*. Therefore, the responsible FAA official should start scoping as soon as possible after FAA publishes the NOI.

908. THE NOTICE OF INTENT (NOI). The NOI is the lead agency's notice telling the public the agency will prepare an EIS (40 CFR 1508.22).

 a. NOI contents. The NOI must:

  (1) Briefly describe the proposed action, the name of the project proponent, why the proponent wants to undertake the project, when and where the proposed action would occur, and the alternatives under consideration.

  (2) Briefly describe an agency's proposed scoping process, including information about a scoping meeting (date, place, time), if the agency will hold one or more scooping meetings.

  (3) Provide the name and telephone number of the responsible FAA official who will answer questions about the proposed action and the EIS. and

  (4) If an EA was prepared, state whether that document is available and where the public may review it.

 b. Publishing the NOI. As paragraph 907.a of this Order notes, FAA must publish the NOI in the *Federal Register* soon after deciding to prepare an EIS. In filing a NOI with the Office of the Federal Register, the responsible FAA official must follow the procedures the Office of the Chief Counsel's Regulations Division (AGC-200) has established. The official may use local media as other ways of alerting the affected area about the pending EIS.

909. WITHDRAWING AN NOI. Sometimes, after issuing an NOI, FAA's analyses suggest the proposed action and its reasonable alternatives would not cause significant impacts. In other cases, FAA may begin preparing an EIS because it is unsure that mitigation would effectively reduce expected adverse impacts below significance thresholds, but later finds that mitigation would eliminate the anticipated significant impacts. In either case, FAA may change its earlier decision to prepare an EIS (40 CFR 1501.7(c)).

 a. Publish notice in the *Federal Register*. When this occurs, the responsible FAA official should publish a notice in the *Federal Register* and local media telling the public it is withdrawing its intent to prepare an EIS. The notice should tell the public that the sponsor, its consultant, or the consultant FAA selected to prepare the EIS will prepare an EA for the project. The notice should also clearly explain why FAA is not preparing an EIS.

 b. Start an EA. After completing these steps or while doing so, the responsible FAA official should follow the EA process discussed in Chapter 7 of this Order. The responsible FAA official may later decide that circumstances warrant public review of a proposed FONSI pursuant to paragraph 804 of this Order.

910. RESPONSIBLE FAA OFFICIAL SCOPING DUTIES. To fulfill FAA's lead agency role and enhance scoping as discussed in paragraph 906, the responsible FAA official should do the following.

        a.   Determine interested parties. The official should contact ARP personnel and FAA organizations that will have a part in the proposed airport action. The official should also contact other Federal, State, and local agencies or Tribes having an interest or role in the proposed action. Contacting local officials about existing and future land uses and other projects in the airport vicinity is also very helpful. Many of these parties often suggest possible alternatives and identify potential environmental impacts, important issues, and conceptual mitigation. It is wise to include parties opposing the action and try to reach a consensus on issues the EIS will address. This last step may help improve the efficiency of EIS preparation because it ensures the EIS addresses views of affected parties.

        b.   Identify other requirements. The responsible FAA official working with Federal, State, local, or Tribal governments can identify environmental review or consultation requirements beyond NEPA. This step helps FAA to efficiently prepare the EIS. It also helps Federal agencies that are involved in the action prepare concurrent analyses or studies necessary to process other authorizations such as Clean Water Act Section 404 permits. This cooperation increases the number of legal requirements the EIS will address and allows approvals or authorizations to occur within similar timeframes. It also helps to reduce repeating efforts, data, and documentation.

        c. Identify cooperating agencies. As the lead agency for most airport actions, FAA is ultimately responsible for an EIS's scope and content. However, the responsible FAA official should invite certain agencies or Tribes to be cooperating agencies. These parties normally have jurisdiction by law over the action's environmental issues or impacts. They typically include Federal, State, or local governmental agencies or Tribes having permitting, approval, or veto authority over some aspect of the proposed action.[3] The responsible FAA official may also invite agencies having special expertise to serve as cooperating agencies.

        (1) Cooperating agencies aid FAA's EIS preparation and review by focusing on impacts to resources under their jurisdictions or for which they have expertise. Their input is critical, especially for the resources that special-purpose laws and regulations protect. The primary intent of this effort is to ensure EIS completeness, thereby allowing a cooperating agency to use FAA's EIS to meet the cooperating agency's environmental review needs.

        (2) Cooperating agency input helps the responsible FAA official identify past, present, and reasonably foreseeable actions. The responsible FAA official should seek help from these agencies to identify public environmental documents that other agencies

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[3] CEQ memorandum entitled, *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, dated January 30, 2002, provides more information.
http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html

have completed, are preparing, or will prepare. This step helps to more thoroughly define the EIS's scope of cumulative impacts.

d. Focus EIS content. Although FAA is ultimately responsible for EIS scope and content, earlier paragraphs stress the need to candidly discuss potential impacts with jurisdictional or expertise agencies. This effort is helpful to the responsible FAA official because it highlights the information and methods needed to scientifically and comprehensively analyze the action's impacts in proportion to their significance (40 CFR 1502.2(b)). This step also helps the responsible FAA official focus the EIS on those resources the proposed action and its reasonable alternatives would significantly affect.

e. Identify impacts that are not significant. The responsible FAA official should lead discussions to determine if scoping participants have concerns about FAA's preliminary analyses or methodologies. Based on preliminary analyses, the responsible FAA official should identify those resources FAA believes the proposed action is unlikely to significantly affect. For those resource impacts, the official should state that the EIS would provide only the information needed to show why the impacts are not significant. In fact, the information should be similar to that found in an EA to keep the EIS to a manageable size while allowing readers to focus on significant impacts.[4]

f. Explain the timing of FAA's Record of Decision. This explanation helps the public understand the decision process FAA completes for most airport actions that are subjects of EISs. The official should explain that FAA's completion of a final EIS does not mean the approving FAA official will immediately make a decision on the proposed action. Before doing so, FAA must prepare its Record of Decision (ROD) for the proposed action. During this "wait period," the responsible FAA official may review and consider any substantive comments that FAA received on the final EIS. The official must ensure the comments and FAA responses to are included in the ROD.

g. Determine other scoping needs. This helps determine if the following steps are needed to effectively complete the EIS process.

(1) Conduct other scoping opportunities to determine other substantive issues, or to integrate the environmental review with other FAA planning or administrative requirements.

(2) Setting time limits for providing input or completing reviews.

(3) Adopting procedures to combine EIS preparation processes. and

(4) Setting page limits.

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[4] As an alternative, the responsible FAA official may wish to suggest referring readers to other documents that discuss the insignificant impacts and that FAA will include those references for the EIS.

h.   How FAA will address comments an agency fails or refuses to provide during scoping. No agency or Tribe should deliberately withhold known critical information during scoping. Doing so with the intent to later delay or stop an action is unacceptable. A cooperating agency has a duty to raise issues or participate in scoping and EIS preparation if they can reasonably do so. Generally, if a cooperating agency fails to cooperate, the lead agency may not find the cooperating agency's comments persuasive at a later stage.[5] If this occurs, the responsible FAA official should document FAA efforts to coordinate with non-responsive agencies.

911.   THE AIRPORT SPONSOR'S ROLE DURING SCOPING. The airport sponsor, not FAA, proposes airport development and decides if it will build and operate that development. Therefore, the airport sponsor plays a critical scoping role because it has knowledge about the airport's operations and its relationship with the surrounding affected community.

  a.   Review effects of various proposals on airport operations. The sponsor, other parties, and FAA's Air Traffic Office work together to safely and efficiently operate an airport.

  (1) The airport sponsor should evaluate information discussed during scoping to help the responsible FAA official or FAA airport planners determine how impacts noted during scoping could potentially affect airport operations. Sponsor input will be important later when FAA develops the range of reasonable alternatives the EIS will analyze in detail.

  (2) Sponsor awareness of and concurrence with potential mitigation concepts within its authority is crucial. These factors promote the sponsor's acceptance of the measures needed to reduce the action's environmental impacts and help make the environmental review and decision making processes more efficient.

  b.   Act as liaison. Often, the sponsor is the principal link between FAA and the affected communities. Therefore, the sponsor can fulfill important liaison roles during scoping.

  (1) Inform the public. The airport sponsor is often the best entity to explain efforts that have occurred in the airport area to make the airport compatible with surrounding land uses. Providing that information and explaining its concerns about substantive issues allows the airport sponsor to tell the public it is aware of public concerns and is willing to address them.

  (2) Exchange information. Information exchanges among the sponsor, interested parties, and FAA allow the public to fill important roles in the project review process. This effort may help the sponsor more clearly explain its rationale for doing or

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[5] See *Forty Most Asked Question Concerning CEQ's National Environmental Policy Act Regulations*, Question 14.d.

not undertaking certain duties at its airport. Exchanging information allows people to feel they are participants, not spectators. As a result, they often have a sense of being part of the sponsor's effort to develop an airport action. Studies of past EIS Best Practices show such efforts often promote public acceptance of a proposed action, even if the action is unpopular. This acceptance occurs because the public is better able to understand what the airport sponsor and FAA need to do to operate the airport safely and efficiently.

912.   FAA'S ROLES AS A COOPERATING AGENCY. FAA will be the lead agency for most airport actions. However, FAA may be a cooperating agency in special situations, such as reuse of a military base as a civilian airport or conveyance of Federally-owned land for an airport action. When this occurs, the responsible FAA official should review information in paragraphs 910.c(1) and (2) regarding a cooperating agency's roles during scoping.

913. – 999. RESERVED.