



# Federal Register

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**Thursday,  
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**Part III**

## **Department of Transportation**

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**Federal Aviation Administration**

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**National Environmental Policy Act (NEPA)  
Implementing Instructions for Airport  
Actions; Notice**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration**

[Docket No. FAA-2004-19058; FAA Order 5050.4B]

**National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of publication of the Preamble to Order 5050.4B.

**SUMMARY:** The Federal Aviation Administration's Office of Airports (ARP) is responsible for reviewing and deciding on projects airport sponsors propose for public-use airports. ARP revised its National Environmental Policy Act (NEPA) implementing instructions for those airport projects under its authority and placed those instructions in Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions. The Order's effective date was April 28, 2006.<sup>1</sup>

ARP announced the availability of that Order and its Preamble in the April 28, 2006, **Federal Register** (71 FR 25279). There, ARP noted that it would publish the text of the Preamble in the **Federal Register** shortly after the April 28th Notice of Availability. Today's publication of this document satisfies ARP's commitment to publish the Preamble in the **Federal Register**.

The Preamble presents a summary of the major changes ARP has included in Order 5050.4B. The Preamble also discusses the many changes and additions ARP has made in response to comments on draft Order 5050.4B that ARP published in the December 16, 2004, version of the **Federal Register** (69 FR 75374). The Preamble also discusses other changes ARP judged necessary since publishing the draft Order.

Order 1050.1E Environmental Impacts: Policies and Procedures sets FAA's agency-wide environmental protocol. Order 5050.4B supplements Order 1050.1E by providing NEPA instructions especially for proposed Federal actions to support airport development projects. Order 5050.4B follows the Council on Environmental Quality's (CEQ's) NEPA implementing regulations at 40 CFR 1500-1508. It also follows DOT's Order 5610.C, Policies for Considering Environmental Impacts, and FAA Order 1050.1E.

ARP has made Order 5050.4B as consistent with FAA Order 1050.1E as

possible. Users of Order 5050.4B must interpret it in a manner consistent with FAA Order 1050.1E. Exceptions to this rule apply to internal FAA coordination and review of environmental documents. For those actions, users follow the instructions in Order 5050.4B. If specific questions about the instructions in Orders 1050.1E and 5050.4B arise, users should call the contact person noted below for clarification. The contact will notify FAA's Office of Environment and Energy (AEE), the FAA organization responsible for developing general NEPA procedures for all FAA organizations, about identified conflicts. This will provide a transparent system to resolve legitimate conflicts and ensure NEPA conformity within all FAA organizations.

**Cancellation:** Order 5050.4B, replaces Order 5050.4A, Airports Environmental Handbook, dated October 8, 1985.

**DATES:** *Effective Date:* Order 5050.4B is effective April 28, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Please e-mail or call: Mr. Ed Melisky ([edward.melisky@faa.gov](mailto:edward.melisky@faa.gov)), Environmental Specialist, Federal Aviation Administration, Office of Airport Planning and Programming (APP-400), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5869; fax (202) 267-8821.

**SUPPLEMENTARY INFORMATION:** The National Environmental Policy Act (NEPA) and CEQ's regulations implementing NEPA provide Federal agencies with instructions on protecting the quality of the human and natural environments. NEPA and its implementing regulations require Federal agencies to carefully evaluate and consider the environmental effects of actions under their respective authorities before the agencies make decisions on those actions.

Section 102(B) of NEPA requires Federal agencies, in consultation with CEQ, to develop procedures to carry out NEPA and CEQ's regulations for activities under the agencies' respective purviews. Although FAA Order 1050.1E presents FAA's agency-wide instructions to complete the NEPA process, ARP is issuing Order 5050.4B to supplement those instructions. ARP has traditionally published Order 5050 to provide detailed NEPA instructions specific to airport actions under its authority. Readers wanting to know how other FAA organizations address NEPA requirements for non-airport projects should see FAA Order 1050.1E.

As noted earlier, Order 5050.4B replaces Order 5050.4A dated October 8, 1985. That Order served FAA personnel,

airport sponsors, airport consultants, Federal, State, local, and tribal governments and the public well for over 20 years. However, changes in Federal laws and regulations, FAA policies and procedures (*i.e.*, Order 1050.1E), and evolving environmental processing and evaluation for airports occurring since 1985 signaled the need to issue Order 5050.4B.

**Distribution:** ARP is distributing this Order to ARP personnel and other interested parties by electronic means only. ARP has placed this Order for viewing and downloading at its Web site.<sup>2</sup> Anyone without access to the Internet may obtain a compact disk (CD) containing the Order. Please make that request to the Federal Aviation Administration, Office of Airport Planning and Programming (APP-1), 800 Independence Avenue, SW., Washington, DC 20591. Those unable to use an electronic version of the Order, may obtain a photocopy of the Order by contacting FAA's rulemaking docket at: Federal Aviation Administration, Office of Chief Council, Attn: Rules Docket (AGC-200)—Docket No. FAA-2004-19058, 800 Independence Avenue, SW., Washington, DC 20591.

**Summary of changes:** FAA Order 5050.4B includes information from the draft Order published in the **Federal Register** on December 16, 2004, and additions or changes to that draft. The re-organization and addition of material to respond to comments on that draft have caused changes to the Order's organization and chapter titles. Because of these organizational changes, this Preamble discusses comments referencing specific paragraphs in the draft Order, but ARP's responses refer to the final Order's revised paragraph and subparagraph numbering system. This Preamble presents a summary of the major changes to the draft Order that may be of interest to airport sponsors, the public, other governmental agencies and organizations. The Preamble also presents ARP's responses to public comments on draft Order 5050.4B.

**Major changes in final FAA Order 5050.4B:** a. The Order deletes the summary of requirements and procedures under special purpose environmental laws, regulations, and executive orders outside NEPA. Order 5050.4A addressed these topics in paragraphs 47.e.(1) thru (20) and 85.a through t. Those paragraphs addressed various requirements protecting sensitive environmental resources such as wetlands, federally-listed endangered

<sup>1</sup> The Order and Preamble are available electronically at ARP's Web site, [http://www.faa.gov/airports\\_airtraffic/airports/](http://www.faa.gov/airports_airtraffic/airports/)

<sup>2</sup> [http://www.faa.gov/airports\\_airtraffic/airports/resources/publications/orders/environmental\\_5050\\_4/](http://www.faa.gov/airports_airtraffic/airports/resources/publications/orders/environmental_5050_4/)

species, or historic properties. However, Order 5050.4B, Table 7-1 keeps information from those paragraphs that ARP and commenters found helpful in determining impact intensity and the proper NEPA review. In addition, this information will help users integrate the review, analyses, and consultation requirements of applicable special purpose laws with NEPA requirements.

ARP will issue a separate document entitled, Environmental Desk Reference for Federal Airport Actions (Desk Reference) to provide its staff and interested parties with information to integrate and comply with Federal environmental laws, regulations, and executive orders other than NEPA. ARP plans to issue the Desk Reference as soon as possible. Meanwhile, FAA personnel and other interested parties should use Appendix A in Order 1050.1E for guidance.

ARP is making this change to address recommendations FAA received when it published a draft version of Order 1050.1E for comment. Some commenters recommended that FAA delete Appendix A of that Order to focus that document on NEPA's implementing instructions. ARP's review of NEPA implementing instructions published in the **Federal Register** during 2004 shows none of the six Federal agencies publishing NEPA instructions included substantial information about Federal environmental laws, regulations, or executive orders outside NEPA.

ARP's removal of requirements outside NEPA from Order 5050.4B does not reflect a lack of FAA commitment to meet those requirements or absolve airport sponsors from complying with them. Compliance with those special purpose laws does not depend on their presence or absence in Order 5050.4B because many of them have their own compliance requirements. ARP will continue to integrate compliance with applicable environmental laws, regulations, and executive orders outside NEPA with its NEPA process to the fullest extent possible to streamline the overall environmental review process.

b. When compared to the draft version of Order 5050.4B, ARP has made organizational changes to more logically and clearly present information about the NEPA process and how ARP implements it. Chapter 2 of the final order focuses on special NEPA requirements and responsibilities for airport actions. Formerly, Chapter 5 ("Special Instructions") presented that information, but ARP decided to place that information earlier in the Order. ARP made that change to provide an

early alert to airport sponsors, ARP personnel, and State Block Grant Program (SBGP) participants about the NEPA process and each entity's responsibilities in that process. Presenting that information earlier in the Order ensures those responsible for airport actions pay close attention to the subsequent chapters and their contents to ensure efficient, effective NEPA processing. ARP deleted the instructions about airport and noise planning grants in paragraphs 500 and 501, which simply explained the categorical exclusions in Chapter 6. ARP has kept information on agency and Tribal consultation and participation in Chapter 3, but has created new Chapter 4 to highlight the need for public involvement. Formerly, public involvement information was a portion of Chapter 3.

New Chapter 5 focuses on coordinating airport planning and the NEPA process. ARP includes that information to better promote coordination between airport planning and the NEPA process as CEQ regulations require. The draft Order devoted only one paragraph (paragraph 302.a) to this important topic. However, to promote streamlining and efficient analyses, Chapter 5 stresses the critical linkage between airport planning and the NEPA process. ARP based much of this chapter on valuable planning and environmental information in its Best Practices Web site<sup>3</sup> and Advisory Circular 150/5070-6, Airport Master Plans. Revised Chapters 6 through 13 provide information on categorical exclusions (CATEXs), environmental assessments (EAs), environmental impact statements (EISs), and Records of Decision (RODs), respectively. Chapter 6 incorporates the information on CATEXs that appeared in Chapter 4 of the draft Order. Chapter 7 incorporates information on EAs the draft Order discussed in Chapter 4.

Finally, Chapter 9 contains information on airport actions normally requiring an EIS. The chapter also discusses scoping and the EIS's purpose and content. Formerly, Chapters 4 and 10 of the draft Order provided that information. Finally, Chapter 15 of the final Order retains information on streamlining the environmental process for airport capacity enhancement projects at congested airports or airport safety and security projects that "Vision 100—The Century of Aviation Re-Authorization Act of 2003" (Vision 100) discusses.

<sup>3</sup> (<http://www.faa.gov/arp/environmental/5054a/bestpractices.cfm>)

c. Order 5050.4B provides definitions for important terms used during ARP's NEPA analysis for actions at airports. Among other definitions, the Order provides definitions for the term "approving FAA official" and notes decisions for actions at airports are delegated to various personnel. This reflects requirements in FAA Order 1100.154A, Delegation of Authority, dated June 1990, which notes the approving FAA official will vary due to the number of FAA organizations an airport action involves. Order 5050.4B also defines the term "Federal action" and how it applies to actions under ARP's authority. Since publishing the draft Order, ARP has added definitions in paragraph 9 for the terms "Environmental Management System" and "'NEPA-like' State or agencies." The Order also provides a revised, more comprehensive definition for the term "reasonably foreseeable action." The definition, now at paragraph 9.q and presented in a short table, lists criteria for off-airport and on-airport actions. ARP developed this definition to help users better define "reasonably foreseeable actions." The final Order also provides a revised definition for "special purpose laws." The final Order at paragraph 9.t, now lists all the laws, regulations, and executive orders comprising that term.

d. Chapter 2 provides information on limits for conditional airport layout plan (ALP) approvals. Paragraph 202.c(4) (paragraph 505b(3) in the draft Order) has been revised to clarify that these limitations apply when a sponsor or its consultant is preparing an EA or FAA is preparing an EIS for a major airport development project. ARP limits such approvals to avoid the appearance that it is making decisions on proposed projects before it completes the required NEPA processes for those actions. ARP also modified paragraph 202c(4) to clarify that FAA may conduct and issue airspace determinations for those projects. The paragraph also clarifies that FAA may approve other actions at the same airport, provided those actions are independent of the actions that are the subjects of an EA or EIS being prepared.

e. Paragraphs 202.d(1), (2), and (3) provide suggested language for conditional, unconditional, or mixed airport layout plan (ALP) approval letters, respectively. ARP added the "mixed ALP approval" to the final Order to address those situations where ARP reviews ALPs depicting short-term and long-term projects that are and are not ripe for decision, respectively.

f. Paragraph 204 (paragraph 507 in the draft Order) discusses land acquisitions

by airport sponsors during the EIS process. ARP notes that 40 CFR 1506.1(a) and (b) state that, until a Federal agency issues its Record of Decision, neither the agency or the applicant may take an action concerning any proposal that would adversely affect environmental resources or limit the FAA's choice of reasonable alternatives.

g. Paragraph 205 discusses FAA's roles and responsibilities under NEPA when an airport sponsor wishes to participate in a joint-use program or program to convert a military airfield to civilian use. Joint-use occurs when the sponsor shares use of an airport with the U.S. Department of Defense. In these instances, FAA normally will be a cooperating agency for NEPA purposes.

h. Paragraph 208 (formerly paragraph 511 in the draft Order) provides instructions to the responsible FAA official on complying with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. The official must meet the Executive Order's requirements if NEPA analysis shows an airport action would cause a significant impact in a foreign land. Revised paragraph 208 includes the need for FAA to coordinate communications with the Department of State through the Department of Transportation's Office of Transportation Policy Development (P-100), per Order 1050.1E, paragraph 521f.

i. Paragraph 209 (paragraph 513 in the draft Order) has been revised to distinguish between: (1) FAA grant funding for development of wildlife hazard management plans (WHMPs) and approval of those plans based on safety factors; and (2) subsequent FAA actions to support implementation of measures in those plans. The instructions for NEPA review associated with WHMPs are now similar to the instructions for NEPA review regarding airport noise compatibility planning. Paragraph 303.b of draft Order 5050.4B noted that issuance of AIP grants for noise compatibility planning is categorically excluded under paragraph 307n of Order 1050.1E. Paragraph 209a of the Order 5050.4B clarifies that the grant to fund the development of a WHMP or the approval of that plan normally qualifies for a categorical exclusion under Order 1050.1E, paragraph 308e. Paragraph 209.b clarifies that airport layout plan approvals and/or approvals of grants for Federal funding to carry out measures in FAA approved WHMPs: (1) May qualify for a categorical exclusion; or (2) may require preparation of an environmental assessment or an environmental impact statement.

j. Paragraphs 212.e and 303 provide information on complying with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The paragraphs discuss the need for government-to-government relations when a project may involve or affect federally-recognized Tribes, their trust resources, or other rights. The paragraph also notes FAA personnel must follow FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures when addressing issues with those Tribes.

k. Paragraphs 210 through 214 provide detailed policies and procedures for FAA's State Block Grant Program (SBGP). ARP presents detailed guidance to fulfill a commitment FAA made in the Preamble to Order 1050.1E. Specifically, paragraph 210 of Order 5050.4B discusses the SBGP in general and the SBGP actions at non-primary airports that are the responsibilities of states participating in the SBGP. Paragraph 211 notes that these duties include completing the environmental requirements ARP would have normally fulfilled for an airport-specific project and associated Federal actions if ARP had retained discretion over the use of SBGP funds. Under 49 U.S.C. 47128, states participating in the SBGP assume administrative responsibilities for all airport grant amounts available under Subchapter 1 of Chapter 471 (49 U.S.C. 47101-47137) (the SBGP), except for amounts designated for use at primary airports. For purposes of paragraphs 210-214, Order 5050.4B distinguishes between apportionment of funds made available to the states under 49 U.S.C. 47114(d)(2) and (3) and discretionary funds awarded to airports under 49 U.S.C. 47115 and administered by states participating in the SBGP. Paragraph 212 notes that ARP does not have approval or funding authority for projects under the SBGP wholly funded through apportionments under 47114(d)(2) and (3). A state agency's assignment of SBGP money for specific airport actions to individual, non-primary airports is not a "Federal action." Therefore, NEPA does not apply to those airport actions because FAA has no discretion over the use of the SBGP funds financing those actions. However, the paragraph notes that for policy reasons, ARP contractually requires states participating in the SBGP to fulfill the environmental duties ARP would have fulfilled if it had discretion over SBGP airport actions. This contractual commitment ensures that the participating states properly evaluate and consider the potential

environmental impacts resulting from SBGP airport actions before deciding to fund those projects under the SBGP. Paragraph 212 further discusses how an SBGP agency must use this Order to prepare environmental documents for SBGP actions. Paragraphs 212.b and c note that contractual commitments under the SBGP depend on whether the participating state is subject to "NEPA-like" or "non-NEPA-like" state environmental laws. Paragraph 213 discusses the actions connected to SBGP airport actions that are outside the SBGP that remain under the authority of ARP or other FAA organizations. For those connected actions, the FAA organization having authority for the action outside the SBGP (e.g., installing radars, NAVAIDS, lighting systems, etc.) remains responsible for complying with NEPA and other applicable environmental laws pertaining to those actions. The paragraph also notes that ARP retains responsibility where the SBGP agency requests AIP discretionary funding to supplement SBGP funding for a specific airport project at a specific location. Paragraph 214 provides information on environmental documents needed for SBGP projects and their connected actions and SBGP and FAA organization NEPA responsibilities for those actions.

l. As noted earlier, Chapter 4 is a new chapter on public participation. ARP includes it to highlight the importance of public participation in the NEPA process for airport actions. ARP decided to dedicate a chapter on this topic to make it easier to find instructions on this critical process. The draft Order inconveniently presented this information in different Chapters.

m. ARP includes Chapter 5 in the Order to highlight the need to closely coordinate airport planning and the NEPA process. Doing so allows airport sponsors to plan their projects efficiently and facilitate FAA's subsequent evaluation of an airport plan's environmental effects. CEQ regulations tell agencies to integrate planning and NEPA as early as possible. This chapter underlines this requirement by alerting airport sponsors, their planners, and ARP personnel to it. It significantly expands upon the information included in paragraph 302 of the draft Order that addressed coordinating airport planning and NEPA. This interdisciplinary coordination is not intended to be a substitute for the NEPA process. Instead, it encourages planners to work with environmental specialists to identify sensitive environmental resources and consider alternative ways to avoid or reduce a project's

environmental impacts early in the planning process when the greatest range of alternatives exists. If those alternatives do not exist, this coordination help ensure unavoidable environmental effects are justified and minimized as much as practical. The chapter adds paragraph 504d. The paragraph states that the range of alternatives FAA and the airport sponsor consider during airport planning may be limited to those actions within the sponsor's or FAA's purviews. This is different than the range of alternatives FAA considers during the NEPA process, since NEPA requires the lead Federal agency to examine alternatives that are outside the agency's jurisdiction. The chapter also discusses critical airport planning data for which the airport sponsor is responsible and the data's importance to effective and efficient environmental analyses. The chapter discusses key planning steps that help FAA and airport sponsors meet their responsibilities and streamline the planning and NEPA processes. ARP experience shows that failure to coordinate these processes causes delays in the preparing NEPA documents. Often, this is because important planning data needed to thoroughly evaluate environmental effects were not available when document preparation began.

n. Chapter 6 of the Order includes information on airport actions that are normally categorically excluded (CATEXs). The draft Order addressed CATEXs in Chapters 4 and 6, but to improve document organization, the final Order places information on CATEXs in Chapter 6. Tables 6-1 and 6-2 list those portions of the categorical exclusions in Order 1050.1E, paragraphs 307-312 discussing airport actions. Table 6-1 lists the CATEXs rarely involving extraordinary circumstances, while those listed in Table 6-2 involve those circumstances more often. ARP personnel must use the citations from Order 1050.1E as authorizations for the CATEXs Tables 6-1 and 6-2 summarize.

Table 6-1 does not add or alter any CATEXs. However, Table 6-2 Order includes a new categorical exclusion addressing categorically excluded actions in non-jurisdictional wetlands and a CATEX addressing voluntary airport low emission equipment (VALE). ARP proposed those categorical exclusions in the December 16, 2004, Notice of Availability of draft Order 5050.4B. Based on comments it received on those issues, ARP has inserted information to address those activities in Table 6-2.

Readers should recall that paragraph 310k of Order 1050.1E includes categorically excluded actions in jurisdictional wetlands qualifying for Corps of Engineers General Permits (GP). This is because the Corps issues GPs for the types of actions that do not normally cause significant environmental effects (*i.e.*, categorical exclusions). The new entry in Table 6-2 addressing non-jurisdictional wetlands uses similar rationale. That entry focuses on those actions that are normally categorically excluded, but that are not covered by GPs because the actions would not involve jurisdictional wetlands. Nevertheless, by designing projects to meet GP design standards, ARP contends those projects would not normally cause significant environmental effects, provided there are no extraordinary circumstances. Therefore, the actions qualify as categorical exclusions.

Turning to VALE, Table 6-2 includes actions addressing this equipment because paragraphs 309u, 310f, 310n, and 310u of Order 1050.1E address many of the actions associated with installing facilities needed for VALE. See Comments Addressing Table 2 at the end of this Preamble for more information on categorically excluding VALE.

Paragraph 603 emphasizes the need for airport sponsors to provide responsible FAA officials with specific environmental information when sponsors propose actions that may qualify for CATEXs. ARP highlights this step to encourage airport sponsors to collect information the responsible FAA official will need to review a potential CATEX. Doing so should quicken the responsible FAA official's review of a proposed CATEX because the sponsor's request comes to FAA with information the official needs to thoroughly review the proposed airport action. The paragraph also encourages sponsors to allot enough time in project schedules: to collect needed information; to verify that the sponsor or FAA, as appropriate, has complied with special purpose laws related to any potential extraordinary circumstances; and to enable the responsible FAA official to complete a timely review of the proposed action.

Table 6-3 alphabetically lists and annotates the extraordinary circumstances that FAA Order 1050.1E, paragraph 304 presents. Readers should note that ARP has added a footnote to this table defining the terms, "dividing" and "disrupting" communities. ARP did this to address many questions it received on these terms as they relate to airport-induced community impacts. The Order also provides instructions on

special purpose laws and their relationships to extraordinary circumstances when determining if an action may be categorically excluded. Paragraph 606.b provides details on how the responsible FAA official must address extraordinary circumstances involving special purpose laws. Paragraph 607 highlights required and optional documentation for CATEXs with extraordinary circumstances that involve special purpose laws. The paragraph notes that FAA requires specific documentation before it issues a CATEX for a proposed action that possibly involves extraordinary circumstances associated with one or more applicable special purpose laws. That documentation is helpful in determining the level NEPA review, but it is not for NEPA purposes. Rather, it shows compliance with the applicable special purpose law. Paragraph 607 also tells the responsible FAA official to ensure that case files for CATEXs involving special purpose laws include documentation to show FAA has complied with the special purpose laws applicable to those CATEXs.

Paragraph 608 requires the responsible FAA official to inform the airport sponsor via a dated letter or dated e-mail that ARP has categorically excluded an action. ARP includes this instruction to ensure airport sponsors know that ARP has completed the NEPA process for a categorically excluded action, or that it has denied a CATEX for a proposed action. ARP makes this a formal step in its NEPA implementing instructions to address misunderstandings that have occurred concerning categorically excluded airport actions.

o. ARP revised Chapter 7 to place information about environmental assessments (EAs) in one chapter. Paragraph 405 of the draft Order expanded the list of airport actions normally requiring EAs. ARP did this to respond to a number of questions about a variety of actions that Order 5050.4A, paragraph 22 ("Actions normally requiring an Environmental Assessment") did not address. Final Order 5050.4B adopts the list presented in paragraph 405 of the draft Order. The list appears at paragraph 702. Readers should also note that ARP has added paragraph 702.j ("Other circumstances") to the list in the final Order. That paragraph states that the responsible FAA official should consider the need for an EA in circumstances not mentioned in paragraphs 702.a-i, particularly when controversy exists because the proposed action involves a special purpose law. Paragraph 703 discusses those situations where ARP

suggests that it, not the airport sponsor, selects the consultant who will prepare an EA for an airport project. ARP addresses this as a way to streamline the NEPA process, if an EA might later show indicate an EIS is needed. Paragraph 705 includes information on when scoping is helpful for an EA. Paragraph 706 provides information on EA format and content. Paragraph 706.b provides information on Purpose and Need. To conform to 1050.1E, paragraph 706.d.(5) provides details on when an EA must consider unresolved conflicts and the resulting need to expand the EA's Alternatives Analysis beyond the No Action and Proposed Action Alternatives. Paragraph 707.e discusses required and optional Regional Counsel reviews of EAs addressing airport actions. Paragraph 708 notes that a sponsor must coordinate EAs with FAA before issuing them for comment, including those the public will review when preparing for a public hearing. The paragraph notes that the sponsor must: (1) File the Draft EA with the FAA for review; (2) make the revisions the FAA reviewer notes; and (3) make the revised EA available to the public at least 30 days before the hearing occurs. ARP provides this information to ensure draft EAs are available to interested parties as they prepare for a public hearing, if one will be held. ARP provided that information in draft Order 5050.4B, at paragraphs 307c.(2) and (3).

ARP includes new table (Table 7-1) in this chapter. For convenience, Table 7-1 presents agency-wide, impact-specific significance thresholds that Order 1050.1E, Appendix A contains. In addition, ARP supplements those thresholds with helpful information from Order 5050.4A, paragraphs 47.e and 85. a through t that Order 1050.1E, Appendix A does not present. ARP provides this information from Order 5050.4A (called "intensity factors" in draft Order 5050.4B) because experience shows that it is very useful to ARP specialists and others evaluating environmental impacts associated with the land or water impacts airport projects may cause. During the past 20 years, ARP personnel have found that information very helpful in determining if a proposed airport action requires an EA or EIS.

Paragraph 712 refers the reader to Chapter 14 of the Order to ensure Order users know ARP is following the requirement in Order 1050.1E paragraph 411 fixing a 3-year "shelf life" for all FAA EAs. Paragraph 713 refers the reader to Chapter 14 of this Order for instructions on re-evaluating or supplementing an EA for an airport action.

p. Paragraph 800.a discusses the approving FAA official's use of significance thresholds when determining if a FONSI is appropriate for a proposed airport action. Paragraph 801 discusses the process when the approving FAA official prefers an alternative differing from the airport sponsor's proposed action. Paragraph 802 presents information a FONSI should contain and the specific wording reflecting the approving FAA official's environmental finding. Paragraphs 803 and 804 discuss the internal coordination and public reviews FONSI undergo. In particular, paragraph 803.c discusses when a Regional Administrator will sign a FONSI. The paragraph also notes that before the Regional Administrator signs a FONSI, various FAA organizations responsible for a portion of the proposed project must review the FONSI.

Paragraph 805.a describes the factors the responsible FAA official should consider when determining if Record of Decision is needed for a FONSI ("FONSI/ROD"). As Order 1050.1E, paragraph 408 notes, a FONSI/ROD is a combined decision document and environmental determination FAA uses for controversial actions that are the subjects of EAs and FONSI and other specified actions.

Paragraph 806 provides information on distributing approved FONSI, while paragraph 807 discusses the process for notifying the public about a FONSI's availability. Paragraph 808 directs the approving FAA official to incorporate in a grant assurance or unconditional ALP approval letter the mitigation measures required to support a FONSI. It also suggests that FAA use an EMS to track compliance with mitigation commitments.

q. Chapter 9 provides information on EISs. Paragraph 902.c encourages the responsible FAA official to consult with interested parties and involved FAA organizations to establish schedules for preparing EISs. It notes that FAA officials must establish EIS schedules when requested by the airport sponsor. Factors an official and a sponsor should consider when developing a schedule include the proposed action's complexity and the complexity of the environmental analyses and processes needed to complete the analyses. However, interested parties should note even the most thoughtfully developed schedule is subject to events beyond FAA's control and those events may affect any projected schedule. FAA officials will notify and consult airport sponsors when the volume or nature of comments on a DEIS require schedule

adjustments (paragraph 1200.c of the final Order). Otherwise, FAA officials exercise their discretion when revising the schedule to accommodate such unforeseen events.

Paragraph 903 lists those airport actions that normally require FAA to prepare EISs. Paragraph 904.b notes that FAA will begin the EIS preparation as soon as possible after the airport sponsor presents FAA with a proposal within the meaning of 40 CFR 1508.23. FAA will consider whether there is sufficient airport planning data and information when determining if a proposal exists. ARP will do so because during the past decade it has found that a lack of well-conceived and well-developed airport planning information or a failure to resolve planning issues have caused substantial delays in preparing EISs. Often, these delays were not NEPA-related, but, instead resulted from a lack of good airport planning data. This lack of data severely hampered FAA's subsequent ability to meaningfully evaluate project impacts and prepare EISs. Because scoping is so critical to efficient, effective EIS preparation, ARP included more information about the scoping process (paragraphs 905 and 906) than Order 5050.4A provided. Paragraphs 907 and 908 discuss the timing and content of a Notice of Intent (NOI), respectively. Paragraph 909 provides information on how the responsible FAA official may withdraw an NOI. ARP includes this information to address situations where, after anticipating significant impacts during the scoping process, ARP's analyses showed a proposed action or its reasonable alternatives, would not cause significant environmental effects. Paragraph 910 provides expanded information on the responsible FAA official's duties during scoping. ARP includes this information to highlight the varied roles the official fulfills during this critical stage in the EIS process. Paragraph 911 discusses the important roles an airport sponsor may fulfill during scoping due to its knowledge about the airport's operations and its relationship to the surrounding area. Paragraph 912 notes FAA may be a cooperating agency, not the lead agency, in certain situations warranting an EIS. For example, FAA is normally a cooperating agency for airport actions involving military base joint-use or re-use as a commercial airport or conveyance of Federally-owned land for airport purposes.

r. Chapter 10 discusses the process used to prepare an EIS. Paragraph 1001 discusses an EIS's purpose. That paragraph stresses the need to prepare clearly-written documents so the public

unfamiliar with aviation may understand the purpose and need, a sponsor's proposed project, reasonable alternatives, and the environmental impacts the project or alternatives may cause. Paragraph 1003 provides information on preparing EISs. The paragraph discusses "NEPA-like" states and agencies. It explains how FAA and states or their agencies that comply with laws similar to NEPA may work cooperatively during EIS preparation to reduce duplicating efforts. This paragraph also discusses ARP, airport sponsor, and environmental consultant roles during ARP's EIS preparation. It reflects the policy and procedures FAA has adopted for EIS preparation in response to *Citizens Against Burlington v. FAA*, 938 F.2d 190, (DC Cir. 1991). The paragraph notes that FAA decides EIS content, even though the airport sponsor pays the environmental consultant's costs for ARP's preparation of the EIS. Paragraph 1003.c provides information about a Memorandum of Understanding (MOU) governing ARP, sponsor, and consultant roles during EIS preparation. Paragraph 1003.d discusses the need for a Disclosure Statement environmental consultants must sign to work with ARP as it prepares the EIS. The paragraph also discusses the limits on consultant activities during EIS preparation.

Paragraph 1004 discusses limitations on FAA and airport sponsor activities during the EIS process. Paragraph 1004.a discusses limits on airport sponsor or FAA activities that would cause adverse effects or limit alternatives during the NEPA process. Paragraph 1004.c provides information on the steps FAA officials must take if FAA becomes aware that a sponsor is proceeding to final design while FAA is preparing an EIS. ARP provides this information to alert Order users about the requirements in CEQ regulations addressing limits on agency and airport sponsor actions during the EIS process. ARP also includes this information to address questions it has received about the level of planning and design activities a sponsor should normally develop for NEPA purposes. Conversely, paragraph 1004.d discusses the level of plans and design a sponsor may need to apply for permits or financial assistance. ARP recognizes the differences in design levels to streamline the NEPA process and to avoid duplicating paperwork or State or local procedures. Paragraph 1005 explains how ARP adopts another Federal agency's EIS as another way to streamline (*i.e.*, improve the efficiency of) the NEPA process and

to reduce paperwork and duplication of efforts.

Paragraph 1007 provides re-organized and updated information on EIS format and content to more closely track information in FAA Order 1050.1E. The paragraph also includes information from the FAA Guide to Best Practices ARP has found important in preparing EISs. Paragraph 1007.b(8) clarifies instructions in the draft Order that discussed the environmentally preferred alternative. To correctly reflect 40 CFR 1505.2(b), the final Order encourages FAA to identify the environmentally preferred alternative in the final EIS. ARP makes this change to more accurately reflect 40 CFR 1505.2(b), which requires identification of that alternative in the Record of Decision, not the final EIS.

Paragraph 1007.e(5) in the final Order now states the criteria the responsible FAA official must consider when determining the "prudent" of an alternative per 49 U.S.C. 47106.(c)(1)(B). This section of 49 U.S.C. requires the Secretary of Transportation to consider a "possible and prudent alternative" when considering a grant application for a project involving a new airport, a new runway, or a major runway extension having significant adverse effects. Although criteria in paragraph 1007.e(5) apply to decisions for actions involving Section 4(f) resources (now, 49 U.S.C. 303), FAA is using that definition of "prudent" for major airport projects to aid its staff determine when an alternative is "prudent." FAA worked with the Federal Highway Administration (FHWA) on the definition as presented in FHWA's March 2005 Section 4(f) guidance<sup>4</sup> and believes it is appropriate for FAA actions under 49 U.S.C. 47106.(c)(1)(B) as well as Section 4(f).

Paragraph 1007.h discusses the need to consult the airport sponsor, FAA organizations, Tribes, or resource agencies about conceptual mitigation measures that are not included in the proposed action. Paragraph 1007.m stresses the use of appendices and references to reduce EIS bulk. This promotes CEQ's intent to keep an EIS to a manageable size.

s. Chapter 11 provides information on processing draft EISs (DEIS). Paragraph 1100 discusses how ARP and other FAA organizations internally review preliminary draft EISs. The process varies with the proposed action and if it is subject to Vision 100's streamlining requirements. Paragraph 1101 explains how to distribute DEISs for public and

inter-agency reviews. Various paragraphs provide addresses for headquarters' offices of the Federal departments that review FAA DEISs. The paragraphs also provide the number of hard copies (hard copies and CDs) of a DEIS ARP must send to those departments. Paragraph 1101.b.(1)(d) provides standard language certifying that ARP has issued DEISs to the public at the same time or before it has filed the documents with the U.S. Environmental Protection Agency (EPA). Paragraph 1104 provides instructions for re-circulating DEISs. ARP provides this information to answer questions it has received on this topic.

t. Chapter 12 discusses processing a final EIS (FEIS). Paragraph 1202 notes that CEQ requires an agency to identify its preferred alternative in the FEIS, unless a law prohibits the agency from doing so. This clarifies that FEISs must contain this information, if the approving FAA official did not identify a preferred alternative in the DEIS. Paragraph 1203.b requires the responsible FAA official to ensure the FEIS contains evidence that: (1) An airport sponsor has either certified that the airport management board has voting representation from the communities; or (2) the sponsor has advised communities they have the right to petition the Secretary of Transportation about a proposed new airport location, new runway, or major runway extension.

Paragraph 1203.b.(3) directs the responsible FAA official to ensure that on request, the airport sponsor has made available and provided to an existing metropolitan planning organization in the area where an action would occur, a copy of a proposed airport layout plan (ALP) amendment depicting a major proposed airport project at a medium or large hub airport and the master plan describing or depicting that project. ARP includes this assurance to meet the requirements of 49 U.S.C. 47106(c)(1)(A)(iii) so that ARP may include that information in its Record of Decision, if needed.

Paragraph 1206 discusses the need for an FEIS to include evidence to support necessary determinations addressing impacts to jurisdictional and non-jurisdictional waters and wetlands. Non-jurisdictional wetlands are waters or wetlands that are not "waters of the United States" under Section 404 of the Clean Water Act. Such wetlands do not fall within the jurisdiction of the U.S. Army Corps of Engineers. However, ARP includes information on non-jurisdictional wetlands to address many questions it has received about

<sup>4</sup> <http://enironment.fhwa.gov/dot/projdev/4fpolicy.asp>.



reviewing impacts to those resources. Paragraph 1206 clarifies that impacts on all wetlands, including non-jurisdictional wetlands, must be analyzed to comply with NEPA, Executive Order 11990, Protection of Wetlands; and DOT Order 5660.1A, Preservation of the Nation's Wetlands.

Paragraph 1208 discusses the need for an FEIS to include evidence to support determinations in a ROD for a proposed action that affects coastal resources, even if the action is not at an airport located within the boundaries of a designated coastal zone area. ARP includes this information to address amendments to the Coastal Zone Management Act (CZMA). Among other things, the amendments require Federal agencies to address impacts to coastal zone resources, even if a project occurs outside a state's coastal zone boundaries. Paragraphs 1208.a and b discuss the evidence that an FEIS must include to support determinations in a ROD regarding 15 CFR subparts C and D (regulations implementing the CZMA). Paragraph 1208.a provides information on CZMA consistency requirements for actions FAA does not undertake, but for which it has approval authority. Paragraph 1208.b provides information about consistency requirements for projects FAA itself undertakes, such as installing a NAVAID in a coastal zone. ARP includes this information to highlight the different CZMA requirements that may apply to airport actions.

Paragraph 1209 clarifies the evidence that an FEIS should include for actions involving disproportionately high and adverse impacts on minority and low-income populations. ARP includes this information in the final Order to ensure FEISs address this important issue when appropriate.

Paragraph 1210 discusses the delegation of authority within ARP to approve environmental documents and decisions under FAA Order 1100.154A, Delegation of Authority, dated June 12, 1990. The Order delegates approval authority for certain airport projects from the FAA Administrator to the Associate Administrator for Airports (ARP-1). ARP-1 may further delegate that authority, per Order 1100.154A, as paragraph 1210 explains.

Paragraph 1211 provides updated information on FEIS distribution to reviewing Federal agencies. Various subparagraphs discuss the number of FEIS copies (hard and CD) the responsible FAA official must send to various reviewers. Paragraph 1211.c discusses when FAA may extend the 30-day "wait period" between the time EPA publishes a notice of an FEIS's

availability in the **Federal Register** and the time the agency issues a decision on a proposed action. Order 5050.4B provides this information for those rare occasions when FAA may wish to exercise this option under 40 CFR 1506.10(d).

Paragraph 1212 discusses more details concerning the process for referring EISs to CEQ under 40 CFR part 1504. ARP includes this information to ensure its personnel know about this little used, but important CEQ provision.

u. Paragraph 1301.g requires FAA to ensure the agency and the airport sponsor complete required mitigation. The paragraph suggests using an Environmental Management System (EMS) is an excellent way to track the sponsor's compliance with required mitigation and promote Executive Order 13148, Greening the Government Through Leadership in Environmental Management.

Paragraph 1304 discusses the requirement at 40 CFR 1506.6(b) to notify the public about ROD availability for major Federal actions. The paragraph urges ARP personnel to publish notices announcing FAA's issuance of a ROD for an airport project. Although this is not a CEQ requirement, ARP recommends this because this is an effective way to inform the public about ARP decisions significantly affecting the environment. It also provides a clear starting point for the 60-day statute of limitations for legal challenges under 49 U.S.C. 46110.

v. Paragraph 1401 provides guidance on the longevities of draft and final EAs and EISs, the need for re-evaluating those documents, and the need to supplement them. ARP provides that information to address questions about EA and EIS "shelf-life" it has received since issuing Order 5050.4A in 1985 and to comply with FAA Order 1050.1E, paragraphs 402.a and 514. ARP addresses these issues to ensure NEPA documents provide approving FAA officials with the best available information. ARP further clarifies that a written re-evaluation is required when the responsible FAA official determines an EIS must be re-evaluated.

Paragraphs 1401.b and c discuss the factors the responsible FAA official considers when deciding if he or she must re-evaluate a draft or final EIS, respectively. Readers should note that paragraph 1401.a also notes that the responsible FAA official may use discretion when determining the need for a written re-evaluation in other circumstances. The official may also use discretion when deciding if FAA will distribute the re-evaluation to the public. Order 5050.4B includes this

requirement to address an oversight in Order 1050.1E that FAA corrected in Change 1 to Order 1050.1E (Notice of Adoption, Notice of Availability (71 FR 15249, March 27, 2006)).

Paragraph 1402 provides information about supplementing EAs and EISs to address many questions ARP has received on this topic since issuing Order 5050.4A in 1985. It notes that FAA, and, therefore, ARP, is applying the standards it uses for EISs to EAs to ensure FAA NEPA documents provide accurate and timely information. Paragraphs 1403 and 1404 address tiering EISs and emergency situations and EIS preparation.

w. Chapter 15 provides information on streamlining the EIS process for certain airport projects to address Vision 100 requirements. Among other things, Vision 100 requires streamlining the environmental process for airport capacity projects at congested airports. These are airports that account for at least 1% of all delayed aircraft operations in the Nation. Vision 100 also applies to airport safety and airport security projects throughout the nation, regardless of their congestion levels.

x. ARP has deleted paragraph 407 in the draft Order addressing cumulative impacts. More extensive information on cumulative impacts now appears in paragraph 1007.i of the final Order. ARP will provide more detail on this topic in the Desk Reference. Until ARP issues that information, document preparers and reviewers should use information in paragraph 1007.i of this Order, paragraph 500c of Order 1050.1, and CEQ's guidance on assessing cumulative impacts, Considering Cumulative Effects Under the National Environmental Policy Act (<http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>).

ARP has also deleted the examples of the third party Memorandum of Understanding and the "short form" Environmental Assessment that were included as appendices of the draft Order. ARP is deleting them because it has decided to place examples of documents and other information that ARP has found helpful but not required in the Desk Reference.

y. Appendix 1 includes updated flowcharts on completing the NEPA processes for categorical exclusions, EAs, FONISs, EISs, and RODs.

*Disposition of Comments:* ARP has made additional changes, clarifications, and corrections to the final Order. It does so in response to comments received after publishing the **Federal Register** notice of December 16, 2004, announcing the availability of the draft Order for public review. The changes, clarifications, and corrections are



discussed in the following sections of this Preamble. ARP received comments from three primary sources: (1) An organization representing airport management; (2) an organization representing state, regional, and local governing bodies that own and operate the principal airports serving scheduled air carriers in the United States and Canada; (3) two individual airport sponsors; (4) an organization representing airport consultants; (5) two individual airport consultant corporations; (5) two Federal agencies; (6) various state and local governments; and (7) one member of the public. The term "comment" used in this Preamble refers to an individual issue a commenter raised. A commenter may have raised numerous issues in correspondence forwarded to ARP from the docket. This Preamble also discusses substantive comments resulting from deliberative discussions with the Office of the Secretary of Transportation, the Council on Environmental Quality, internal FAA elements and ARP personnel at regional and district offices.

ARP classified the comments received into three categories: (1) Comments that broadly cover the entire Order; (2) comments that relate to a paragraph or a portion of paragraph in the Order; and (3) comments on Tables 1–3. ARP has provided specific responses to those comments in that sequence, with the level of response commensurate with the degree of public interest expressed.

### General Comments

*The Order in general:* FAA received several comments on the need to update FAA Order 5050.4A. One commenter noted the revised Order was long overdue. Many commenters applauded ARP's efforts to update instructions in a writing style that was clearer and easier to understand than the previous Order. Nevertheless, several commenters noted the document is a "work in progress." Two commenters recommended that ARP conduct working sessions conducted with an open dialogue to address some of the comments of major concern. *ARP's response:* FAA notes the comment on the need to update FAA Order 5050.4A. It appreciates the comments on the effort to update the instructions in a plain writing style. ARP has adopted that style for this Order to help the public understand its NEPA procedures and to comply with FAA requirements to prepare documents in plain English. FAA acknowledges that the draft Order contained language and instructions that required further input to ensure the final version addressed major concerns

and that it was a valuable tool in completing the NEPA process for airport actions.

Regarding working sessions, ARP personnel met with representatives of some of the commenting organizations at various times and locations. In these instances, ARP: (1) Discussed the major concerns the organizations had about the draft Order; (2) sought clarification of other concerns the commenting organizations expressed; and (3) answered questions about the Order. ARP believes the final Order is improved due to this and other efforts. This Preamble's General Discussion provides ARP's reasons for revising the Order to address general comments on the draft. The section of the Preamble entitled Beginning responses to comments on specific paragraphs of the draft Order addresses comments on specific paragraphs and provides ARP responses to those comments.

*Best Practices:* On commenter suggested adding information from The FAA Guide to the Best Practices for Environmental Impact Statement Management (Best Practices). The commenter seeks blending information from the Best Practices with the Order's text or placing it as an appendix to the Order. *ARP's Response:* Agree, in part. Chapter 5 of the Order is based on and incorporates much of the Best Practices' information linking airport planning and the NEPA process. However, ARP believes it is not necessary to include the entire Best Practices document as an appendix to this Order. ARP prepared the Best Practices material as internal guidance and appreciates the commenter's complements on it. Readers seeking additional information on those practices should visit the Best Practices<sup>5</sup> Web site.

*Chapters addressing EISs:* One reviewer states the Order would be more user-friendly if Chapters 9 through 12 were combined into one chapter addressing EIS preparation and processing. The reviewer is concerned that the draft Order's presentation could lead users to think that the instructions are not linked. Consequently, users will not realize these chapters provide details on the various steps the responsible FAA official and/or FAA's EIS contractor complete as they prepare an EIS. *ARP's Response:* Disagree. No other reviewers have voiced this concern. ARP retains the draft Order's presentation. It presents individual, successive chapters explaining how to: (1) Begin and finish preparing a draft and final EIS; (2) making those

documents available for public review and comment; (3) responding to those comments in the final EIS; and (4) preparing and issuing a Record of Decision.

*Consistency and redundancy with FAA Order 1050.1E:* Many commenters stated the draft Order was inconsistent with Order 1050.1E. *ARP's Response:* ARP believes revisions to the draft Order have addressed this concern. ARP intends the instructions in Order 5050.4B to be substantively consistent with 1050.1E, differing only as necessary to provide more specific instructions tailored to airport actions and to legal reviews of environmental assessments and Findings of No Significant Impact.

Turning to redundancy issues, a few commenters noted that this Order repeated guidance in Order 1050.1E or relied on it. *ARP's Response:* Order 1050.1E addresses NEPA requirements for all FAA organizations. However, Order 5050.4B provides NEPA instructions tailored to airport projects. Readers should note that ARP cited paragraph from Order 1050.1E to address comments and underscore certain requirements germane to the agency (e.g., 3-year "shelf life" for an environmental assessment; preparing a Record of Decision for a Finding of No Significant Impact, etc.). ARP did this to highlight new, agency-wide procedures.

Another commenter suggested deleting the tables in Order 5050.4B (Tables 6–1 and 6–2 of this Order) containing portions of CATEXs in paragraphs 307 through 312 of Order 1050.1E. (Tables 6–1 and 6–2 of the final Order provide alphabetically arranged, annotated sections of those paragraphs that apply to airport actions). The commenter stated that having to cite the paragraph in 1050.1E would "tend to confuse" many people. *ARP's Response:* ARP does not agree. This commenter was the only one noting possible confusion. To avoid this confusion and to stress there is only one list of FAA-wide categorically excluded actions, Order 5050.4B uses the citations from Order 1050.1E. Paragraph 602.c of Order 5050.4B clearly instructs the responsible FAA official to use information in column C of Tables 6–1 and 6–2 as the cites for the paragraphs in Order 1050.1E containing the annotated airport action under review.

*Consultation with airport sponsors:* A commenter urged ARP to include airport sponsors in the NEPA process. Although the commenter recognizes FAA's expertise in the national air transport system, it notes that airport sponsors have greater expertise than FAA personnel on local issues, financial

<sup>5</sup> <http://www.faa.gov/Arp/environmental/5054a/bestprac.cfm>.

resources, business arrangements with airlines, and other users specific to their respective airports. In addition, sponsors have the best knowledge of the goals and objectives they wish their airports to attain. They, better than FAA, can provide valuable information on those issues to ensure proposed airport actions address the problems sponsors face. The commenter stated it knows of instances where the airport sponsor was virtually excluded from the preparation and issuance of draft NEPA documents. The commenter stated that the exclusion of sponsors from participating in EIS preparation had potentially serious ramifications on the end product. Therefore, the commenter urges ARP to include airport sponsors in the NEPA process and to help reduce risks of error and delay in that process. The commenter notes sponsors can do so without compromising the independence FAA needs in making decisions about sponsor proposals.

*ARP's Response:* ARP thanks the commenter for recognizing FAA's expertise and agrees airport sponsors provide valuable local and regional information about airports and proposed airport actions. For these reasons, ARP facilitates sponsor participation in the NEPA process. For decades, ARP shared pre-decisional drafts of EIS's with sponsors to achieve common goals, including, among others, the preparation of a complete, accurate, and comprehensive report on environmental impacts sufficient to survive judicial review. However, in response to a recent U.S. Supreme Court decision (*Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 121 S. Ct. (2001)), ARP now limits sponsor participation in terms of access to pre-decisional, deliberative material more so than it did in the past. Today, as a result of the Supreme Court's decision, ARP, on a case-by-case basis, decides when sponsor participation in the NEPA process should include access to pre-decisional, draft documents such as preliminary draft EISs or draft technical reports. ARP staff typically limits sponsor access to draft versions or reports and documents during the NEPA process for two reasons. First, it does so where there is a high level of public distrust and concern about the NEPA process' integrity and objectivity. Second, it does so on controversial projects to help minimize delays in preparing a draft EIS that may arise when ARP staff must devote time to compiling and releasing documents in response to requests under the Freedom of Information Act (FOIA). Under the FOIA, FAA must release to the public

the information it shared with airport sponsors. This is because under the Klamath Decision, the release of that information waives FAA's privilege to withhold information as deliberative in nature under Exemption 5 of the FOIA.

In response to this comment and concerns airport sponsors expressed in the past, ARP has identified what it considers to be a best practice already in use in some regional and field offices. When planning the EIS process and developing EIS schedules, ARP encourages its staff to seek agreement with airport sponsors about the types of preliminary EIS material they wish to see and when the sponsor wants to see it. ARP and the sponsor will not consider just the potential consequences under FOIA, but also state and local laws bearing on the release of deliberative NEPA documents, including sunshine laws and mini-NEPA laws that may apply to the airport sponsor. They will also decide if it makes sense for FAA to seek help from sponsors to accomplish needed tasks and minimize risks of analytical mistakes that could affect the quality of NEPA documents. In each case, ARP will also consider the quality of the relationship and the level of trust with the community. It will also consider the potential chilling effect on the internal deliberative process that may occur due to the release of documents under FOIA. ARP, in consultation with the airport sponsor, will then design the appropriate document review process.

*Desk Reference.* ARP received varied comments on its decision to publish a separate document entitled, Environmental Desk Reference for Federal Airport Actions. *ARP's Response:* Comment noted. Order 5050.4B focuses on the NEPA implementing instructions for airport projects under FAA's purview. However, the Desk Reference will be a compendium of special purpose laws outside NEPA that also apply to those projects. As a compendium, it simply places all of the environmental laws, regulations, and executive orders outside NEPA in one location for the use and convenience of those analyzing airport actions.

ARP is also issuing the Desk Reference to be more responsive to changes in the many non-NEPA laws and regulations that change more frequently than NEPA and the CEQ regulations implementing it. A lack of updated information on non-NEPA laws and regulations in Order 5050.4A has been a source of legitimate concern from ARP staff and other users of Order 5050.4A during the past decade. ARP believes the Desk Reference is the most

flexible and best way to address this problem.

Since 1985, when FAA issued Order 5050.4A, many laws, regulations and orders outside NEPA have been amended or revised, while CEQ's regulations have had one minor change during that period. However, readers should note that since 1985, ARP has issued over 17 Supplemental Guidance Memos to its personnel. Those memos ensured ARP staff had updated instructions on non-NEPA issues resulting from new or amended laws, or regulations implementing them. Also, during training classes and via other methods, ARP issued many instructions to its environmental staff concerning procedural or analytical changes related to special purpose laws. When compared to these past practices, ARP believes the Desk Reference will be a more formal and efficient way to distribute updated information on special purpose laws and how they relate to airport projects.

ARP will issue the Desk Reference after it issues this Order. Until then, ARP staff and other interested parties must use Appendix A of Order 1050.1E for information on assessing resources outside NEPA. When ARP issues the Desk Reference, all parties should use the Desk Reference to analyze airport actions. ARP will make the Desk Reference and changes to it available to ARP's regional and district office personnel and the public. It will do so by placing it on ARP's Web site. In addition, ARP will contact groups representing airport sponsors about the updates and rely on those groups to help ARP announce those updates.

ARP made the decision to issue the Desk Reference after reviewing comments on Order 1050.1E's inclusion of Appendix A, which addresses many of the same Federal laws, regulations, and executive orders as the Desk Reference (69 FR 33810 June 16, 2004). In that **Federal Register**, FAA stated that Appendix A is a helpful attachment to the Order but that it, " \* \* \* will consider changing the format in subsequent revisions of the Order."

Some reviewers stated that ARP should develop the Desk Reference in collaboration with industry stakeholders to ensure NEPA documents meet NEPA/CEQ objectives and how those objectives affect the daily operations of airports. *ARP's Response:* ARP appreciates and understands these concerns, but emphasize that the Desk Reference merely summarizes existing legal requirements. It contains no policy guidance implementing NEPA, so ARP sees little value in affording an opportunity for public review and

commend in advance. Nevertheless, after publishing this Order, but before issuing the Desk Reference, ARP will distribute selected chapters of the Desk Reference for public information purposes only.

In a related matter regarding the Desk Reference, one commenter stated that ARP's failure to prepare an order substantially covering the same material that Order 5050.4A contained (the Order had extensive information on non-NEPA requirements that the Desk Reference will provide) did not meet Congress' intent. *ARP's Response:* ARP respectfully disagrees. ARP notes that as the FAA office responsible for analyzing airport actions, it will consider input from stakeholders, but it has the discretion to decide the contents of Order 5050.4B, provided it meets CEQ, DOT, and FAA requirements. Readers should note ARP prepared this Order in consultation with CEQ. It has received a finding from CEQ that the Order conforms to NEPA; therefore, ARP is assured the Order meets the requirements of NEPA and its implementing instructions. Finally, concurrence of DOT's Acting Assistant Secretary for Transportation Policy indicates Order 5050.4B conforms to DOT requirements.

In another related matter, commenters further noted that ARP's failure to make the Desk Reference available for public review is inconsistent with Vision 100's mandate that FAA issue a revision to Order 5050.4A. *ARP's Response:* ARP appreciates and understands these concerns. Section 307 of Vision 100 set a date by which FAA was to publish a draft version of Order 5050.4B. It did not limit the agency's discretion to update the Order or specify any material that the Order had to include.

ARP wishes to highlight that the agencies responsible for the regulatory changes beyond NEPA often publish those changes in the **Federal Register** for public review and comment. ARP has the discretion to summarize environmental laws and regulations other than NEPA and how they typically apply to airport actions for ease of reference for its personnel in a Desk Reference. As noted earlier, ARP decided the Desk Reference affords a flexible way to stay apprised of the ever-changing regulatory landscape and how it applies to airport actions under FAA's purview. ARP will distribute selected chapters of the Desk Reference for public information purposes only.

Finally, some commenters agree with ARP's approach. However, they are concerned about placing instructions in a Desk Reference makes the instructions in that document difficult to legally

defend. *ARP's Response:* ARP disagrees. Many if not most of the laws and information in the Desk Reference have their own enforcement provisions. ARP's decision to not include them in Order 5050.4B does not diminish those provisions.

*Editorial and grammatical errors:* Commenters noted the draft Order contained editorial, grammatical, and formatting errors. *ARP's Response:* ARP agrees. Readers should note that ARP has not prepared responses to comments on grammatical errors the draft Order contained. Doing so would make this Preamble far too long and cumbersome to read. ARP believes that the extensive re-organization and editing of the Order have addressed most of the organizational and grammatical concerns commenters noted.

*Electronic distribution of this Order:* A commenter indicated that ARP should distribute the Order in compact disc (CD) format or post it on the internet. *ARP's Response:* Agree. ARP will provide free copies of the Order on CD or paper when requested. However, it urges users to use Web access when possible. ARP has posted this Order on the ARP Web site mentioned in the Summary section of this Preamble.

*Electronic distribution of NEPA documents and related materials:* A commenter requests information on the electronic distribution of documents. *ARP's Response:* ARP has included this information in Chapters 7, 8, 11, and 12 of the Order.

*FAA resources:* A commenter states that the draft Order assumes the existence of FAA resources that are not present. Airport sponsors remain frustrated with the time FAA staff needs to address airport projects. The Order assumes the staff has the expertise and experience needed with airports, but many FAA offices do not have those abilities. Staff resources and experience must increase "dramatically" to meet the Order's instructions. The Order should candidly address the problem and provide procedures that that limited FAA staff can meet. The commenter states it has historically supported FAA efforts to get the resources needed to meet agency duties and will continue to do so. *ARP's Response:* ARP appreciates the commenter's support for adequate FAA resources. ARP also understands and appreciates the frustration of airport sponsors regarding staffing, but ARP does not agree that the Order is the place to resolve those issues.

In addition, as FAA discussed in its May 2001 Report to Congress on Environmental Review of Airport

Improvement Projects<sup>6</sup> requirements under NEPA and other Federal environmental laws and local consensus play far greater roles than FAA staffing levels in determining the time needed to complete NEPA reviews for airport development projects. ARP has included in 5050.4B the practical lessons it has learned since 1985 about how to effectively prepare airport EISs. For example, ARP experience indicates airport sponsors will reduce FAA's workload if they complete good master planning and build local consensus before asking the agency to start the NEPA process.

Turning to staffing resources, we believe that many offices have the expertise and ability to address airport projects. Before 2003, ARP had environmental specialists and attorneys with proven track records of successfully completing environmental impact statements for airport development projects within an average of 3½ years. While ARP agrees that some regional and field offices have less expertise and/or higher workloads than others, FAA headquarters historically delivers additional project management, technical, and legal services as needed for a timely and effective EIS process as noted earlier. ARP also notes that its regional and district Airports offices share personnel to the extent permissible and practical to assist in EIS preparation.

ARP acknowledges the commenter's major role in Congress enacting the Department of Transportation Appropriations Act of 2003, part of which established and funded 30 additional positions in FAA to expedite environmental reviews for airport projects. ARP conducts regular training conferences, enrolling employees in reputable environmental training courses, and gradually increases the responsibilities of its newer employees in offices throughout the country. Those new employees are developing the skills and abilities needed to address multiple, complex airport projects concurrently and effectively. At the same time, when ARP anticipates that headquarters resources may not be sufficient to meet schedules for multiple ongoing complex airport projects, it has asked sponsors to fund additional FAA staff and trained consultants.

*Independent Utility:* A commenter requests information on independent utility. *ARP's Response:* Paragraph 202.c(4)(a) discusses ALP approvals for actions having independent utility.

<sup>6</sup> <http://www.faa.gov/arp/environmental/5054a/RTCEnv.pdf>.

*Information in Order 5050.4A:* One commenter noted that in some areas the language in Order 5050.4B is improved over the language in Order 5050.4A. In other instances, neither Order 5050.4B or Order 1050.1E contains language adequately addressing specific airport actions. The commenter fears that these omissions will obscure the clarity of instruction for some of these actions that Order 5050.4A provided. *ARP's Response:* Agree. ARP has revised much of the discussion from Order 5050.4A that the commenter specifically recommended.

*Instructions are not consistent with NEPA:* One commenter voiced its extreme concern that the information in the Order is not consistent with NEPA, that it lacks scientific and factual basis, and that it exhibits a bias toward the aviation industry, while stating it presents environmental stewardship principles. The commenter provided specific examples of its concerns to ensure the Order more accurately reflected NEPA requirements. Some examples the commenter included were: (1) A DNL 3 dBA increase in the DNL 60–65 dBA contour should be a significant effect, (2) FAA should, “\* \* \* produce peer-reviewed scientific research that investigates the effects of a 3 dBA increase in 60–65 DNL contour;” (3) that the DNL metric is the only acceptable noise metric to the exclusion of others; (4) that FAA should seek input of a local advisory board in selecting its EIS consultant; and (5) that FAA should not consider the need to relieve airport congestion as an emergency per CEQ’s emergency procedures at 40 CFR 1504.(b)(2). *ARP's Response:* FAA disagrees with the commenter’s statements on consistency with NEPA. ARP notes that Order 5050.4B must be and is consistent with Order 1050.1E. Since the latter Order presents agency-wide NEPA implementing instructions, Order 5050.4B’s consistency with Order 1050.1E means it is consistent with NEPA. ARP requests that the commenter review the Significant noise impact threshold portion of this Preamble for FAA’s definition of significant noise, the use of the DNL metric, and other noise concerns the commenter noted. ARP also suggests that the commenter review responses to comments on in this Preamble addressing paragraphs 1003 and 1404 for issues related to consultant selection and FAA’s compliance with NEPA during emergencies, respectively. Regarding the Order’s consistency with NEPA, ARP reminds the commenter that CEQ has reviewed Orders 5050.4B as well as

1050.1E. FAA has revised both Orders to ensure they meet CEQ concerns. CEQ’s reviews and certifications of those both Orders indicate CEQ has determined that both Orders conform to CEQ regulations.

*Instructions on “NEPA-like” states or agencies:* Two reviewers sought more information on these issues in general. They request instructions on what to do when state rules specifically require discussions of certain issues and prohibit discussions of others. Of particular note, they seek information on how to handle the topic of human health risks (*i.e.*, hazardous air pollutants) in joint Federal-State documents. They note that Orders 5050.4A and 5050.4B seem to encourage separating State and Federal environmental documents. The commenters note there may be statutory or regulatory limits on combining documents, nevertheless, they request more information on the “NEPA-like” issue. *ARP's Response:* For information on aviation-related air toxins and human health risk assessments, readers should use FAA’s **Federal Register** “Notice of Adoption and Availability of Order 1050.1E” (No. 69. FR No. 115, p. 33784, 6/16/2004). However, since preparing that notice in June 2004, the Federal Highway Administration (FHWA) has issued its Interim Policy on Mobile Source Air Toxins, and FAA has addressed this topic in EISs it prepared for airport actions at Los Angeles (LAX), O’Hare, and Philadelphia International Airports. In these EISs, FAA estimated air toxin emissions but did not prepare human health risk assessments.

Regarding the comment on handling the topic of hazardous air pollutants in a joint Federal and State document, the LAX Final EIS illustrates one way of handling that issue. That joint document was prepared to meet NEPA/CEQA (California Environmental Policy Act) requirements. In the Environmental Justice section of FAA’s FEIS for LAX’s master planning effort, FAA notably included, for disclosure purposes, the human health risk assessment (HHRA) the City of Los Angeles prepared to comply with the California Environmental Quality Act. In that FEIS, FAA explained that it presented the HHRA results as follows: “\* \* \* however, to the extent that fulfillment of the purposes of Executive Order 12898 [on Environmental Justice] would be furthered by such an analysis, presented below are the results of the [Los Angeles World Airports] Human Health Risk Assessment, which was prepared in compliance with CEQA and based upon CEQA thresholds of significance and

provides a qualitative comparisons [sic] of potential health risks.”<sup>7</sup>

Turning to the statement that FAA encourages preparation of separate, documents consistent with 40 CFR 1506.2, FAA NEPA guidance encourages preparation of joint Federal and State documents. FAA recognizes that preparing joint documents is often more complex and time-consuming initially, but joint documents may save time in the long-term by eliminating sequential Federal and State reviews. On the other hand, separate documents may be more efficient and effective where Federal and State requirements and timing differ substantially or the Federal and State agency cannot agree on proper analytic methodology. If separate documents are prepared, FAA and the State should attempt to conduct their environmental review processes on parallel tracks within the same time frames using common databases to the best of their abilities. This will avoid end-to-end sequential processes that often lengthen document preparation times. FAA encourages readers to review the Best Practices’ Web site mentioned earlier for more information.

*References should be available:* A reviewer requests that ARP provide copies of all FAA and DOT documents and orders noted in Order 1050.1E and 5050.4B, or that FAA routinely uses during its NEPA process. The reviewer suggests providing that information via appendices or FAA’s Web site. *ARP's Response:* Most of the Department of Transportation (DOT) and FAA information and other references used to prepare the Orders is available on DOT, FAA, or ARP Web sites. Interested parties may also obtain that and other information via Internet “search engines” by searching on key words in the item of interest.

*Saving time during the NEPA process and streamlining the NEPA process:* A few commenters expressed appreciation for ARP’s efforts to improve its NEPA processes and recognize constrained resources lead many people to perceive that ARP has inefficient NEPA processes. Nevertheless, the commenters urge ARP to save time during the NEPA process by incorporating many measures in that process. These measures include: Parallel, rather than sequential reviews; conducting earlier and frequent coordination with agencies to address purpose and need and alternatives; disclosing EIS data before publishing

<sup>7</sup> FAA’s FEIS for the Proposed LAX Master Plan Improvements, Los Angeles International Airport, Los Angeles, Los Angeles County, California, Volume A, page A.2–88.

draft EISs; making faster legal decisions; and establishing firm deadlines or milestones and emphasizing Vision 100's streamlining terms. The commenters also urge ARP to limit analyses to the requirements of laws or regulations and include words (*i.e.*, milestone, schedule, deadline) in the Order to stress the need to process information in a timely fashion. The commenters believe the Order should instill greater urgency within the agency about the need to reduce processing times. Another commenter argues that FAA should codify performance deadlines. *ARP's Response:* ARP appreciates the commenters' recognition of ARP's efforts to make its NEPA process more efficient. ARP recognizes that there is room for improvement; however, ARP notes that it has a long and proven track record of expediting EISs successfully by using the measures noted in the comment such as parallel processing of environmental requirements and reaching consensus with resource agencies. Chapter 15 of Order 5050.4B expressly addresses requirements for streamlining certain projects under Vision 100 and Executive Order 13274, while other chapters discuss administrative streamlining initiatives and ways to improve the NEPA process for other projects. ARP will continue to use these proven, effective methods to make the NEPA process more efficient.

Regarding the extent of analyses, ARP reminds the commenters that ARP, as the lead Federal agency, not the airport sponsor, is ultimately responsible for meeting Federal legal requirements and preparing an EIS. Therefore, ARP staff, in consultation with expertise agencies, must determine the extent of analyses needed to meet applicable laws and regulations. But airport sponsors sometimes disagree with these ARP decisions. When sponsors disagree with ARP in these matters, they may want to consider if the time spent to resolve disagreements with FAA and resource agencies about impact analyses might be better used to complete the NEPA process. ARP urges sponsors to realize that the analyses are those ARP, in consultation with its legal counsel and agencies having expertise, determines necessary to provide an adequate interdisciplinary analysis as NEPA requires and to comply with applicable laws and regulations. ARP's failure to do so would compromise the sponsor's schedule and the agency's Airports Program. Since FAA is responsible for providing a safe, efficient air transport system, and ARP is responsible for a program that supports that system, it, in

consultation with its counsel, must make the final decisions on the levels of analyses an airport project requires.

Regarding the commenters' recommendations for milestones, deadlines, and schedules, ARP maintains that FAA senior management and agency managers and staff have consistently demonstrated a sense of urgency in addressing major airport development projects. As explained in the response to the comment above relating to FAA Resources, sponsors have the ability to do a great deal to reduce NEPA processing times. Among other things, they should work to build local consensus to support their proposed projects and complete sound master planning before asking the FAA to begin the NEPA process. Expedited EISs for projects that do not come to fruition are frustrating for FAA staff and divert limited resources better invested elsewhere. Further, in its May 2001 Report to Congress on Environmental Review of Airport Improvement Projects, FAA described the administrative initiatives that it uses to improve its processing of airport actions. Many of these initiatives are required for projects selected for streamlined review under Executive Order 13274, Environmental Stewardship and Transportation Infrastructure. In 2003, Vision 100 codified into law the initiatives relating to expedited, coordinated reviews for projects at congested airports. And, within a span of two years, FAA notably issued final EISs and RODs for four major projects: (1) The Runway 17/35 at Philadelphia International Airport; (2) the O'Hare Modernization Program at O'Hare International Airport; (3) Runway 1/19W at Dulles International Airport; and (4) the Master Plan development at Los Angeles International Airport. FAA's performances on these complex and needed projects show that FAA is utilizing existing streamlining initiatives and measures for airport projects. Those efforts show that ARP and FAA work diligently to meet milestones, deadlines, and schedules without compromising the agency's environmental responsibilities. ARP constantly strives to make the NEPA process for airport actions more efficient and effective. ARP believes Order 5050.4B provides instructions that will help expedite environmental reviews.

ARP sees no need to include additional instructions about milestones, deadlines, and schedules in the final Order. ARP has not included specific deadlines for certain NEPA process steps in the Order or to define or codify deadlines as commenters have

suggested. ARP has not done so because each airport action has unforeseen problems that would make a defined deadline contrary to NEPA, unworkable, and unrealistic. ARP urges the commenters and others to note that it will continue to work smarter, more efficiently, and more effectively, but it will not compromise adequate environmental analyses to meet desired schedules. Therefore, ARP will establish tentative schedules for EISs and, if requested, will apply techniques to streamline the NEPA process for airport actions as much as possible without compromising its duty to properly analyze and consider action-related environmental effects. It will do so based on: (1) Scoping and consultation with airport sponsors and involved agencies; (2) the completeness and accuracy of sponsor-provided master planning data; and (3) public concerns. These and other efforts show ARP will establish realistic schedules to properly scope its EISs, but it reminds interested parties that unforeseen issues or problems may alter any well-conceived schedule.

In summary, ARP will establish EIS schedules for projects under Executive Order 13274 and Vision 100, and if requested, projects not under those requirements. But in developing these schedules, ARP will apply techniques to streamline the NEPA process, provided they do not compromise ARP's responsibilities to properly analyze, consider, and disclose action-related environmental effects.

*Significant noise impact threshold:* Some reviewers note that FAA's insistence that there are no significant noise impacts below the DNL or CNEL 65-dB level is unjustified. They contend that FAA should consider impacts below that level, especially in the DNL or CNEL 60 to 65-dB noise contours significant in the Order. One commenter disagrees that DNL is the only metric to measure noise impacts and asserts that its validity is being questioned worldwide. Commenters further state that FAA's assumption that there are no negative health impacts inside this contour is wrong. Finally, FAA is wrong in assuming aircraft noise occurring 3,000 feet above ground level does not cause significant noise effects. *ARP's Response:* FAA addressed the commenters' noise concerns in its **Federal Register** Notice of Adoption and Availability of Order 1050.1E (No. 69. FR No. 115, 6/16/2004, pages 33780–33783, 33812, 33813, and 33816–33820). ARP urges the commenters to review that information for responses to these comments.

*Special purpose laws vs. special protection laws:* One commenter noted the draft Order used these terms interchangeably, but this may confuse the reader. *ARP's Response:* Agree. The final Order uses the term, "special purpose laws" as a "catch-all" term for the Federal environmental laws, regulations and executive orders outside NEPA that apply often to airport actions (Table 1-1 in the Order). Paragraph 9.t defines the term for purposes of the Order.

*State Block Grant Program:* In responding to comments on FAA Order 1050.1E, FAA stated Order 5050.4B would provide details on the State Block Grant Program (SBGP) that ARP manages (69 FR 33788 June 16, 2004). One commenter noted that Order 5050.4B makes a state participating in the SBGP responsible for addressing an airport action's environmental impacts under the SBGP, except for those actions remaining under FAA's purview. The commenter notes there are often no "Federal actions" associated with the state's activities under the SBGP. The commenter further notes that there are no Federal environmental requirements, except for the contractual provisions to comply with NEPA the SBGP agency made with FAA to comply with NEPA when the SBGP agency became a SBGP participant. Those provisions make the participating state responsible for analyzing the environmental effects of actions under the state's SBGP purview. The Order should clarify that for SBGP purposes, references to "FAA" responsibilities mean SBGP agency responsibilities, unless the Order notes otherwise. Another commenter urges FAA to seek opinions from CEQ and EPA about the way FAA conducts the SBGP. The commenter contends that FAA cannot delegate its responsibilities to SBGP participants and that FAA's approach differs significantly from the Federal Highway Administration's (FHWA) local assistance programs. In no instances may State and local requirements substitute for Federal requirements. Following "NEPA-like" laws instead of NEPA will cause many inconsistencies in the SBGP. Therefore, FAA should follow Federal requirements. The commenter suggests that FAA use the commenter's program as an example of delegating responsibilities to a modal entity. *ARP's Response:* Order 5050.4B ARP, paragraphs 210-214 clarify how environmental requirements apply under the SBGP. FAA made a commitment to provide that information in its preamble for Order 1050.1E. Those

paragraphs explain how participating states and various FAA environmental effects of SBGP airport projects and FAA actions associated with those projects.

Regarding the clarification of responsibilities under the SBGP, ARP has revised the Order's Introduction and included new paragraph 212. The revisions clarify that for SBGP actions, participating state agency personnel assume the roles a responsible FAA official or an approving FAA official would normally fulfill, unless Order 5050.4B specifies differently.

Addressing a commenter's note that FAA should seek CEQ and EPA opinions on the way FAA conducts its SBGP, CEQ has determined that 5050.4B procedures, " \* \* \* comport with NEPA." <sup>8</sup>

Addressing the comment on delegating responsibilities to SBGP participants, ARP wishes to again clarify a misconception that it is "delegating" its NEPA responsibilities in SBGP cases. ARP is not delegating those responsibilities because it has no major Federal action to delegate. Paragraph 211 of the final Order clearly states that upon distributing SBGP funding, which is categorically excluded under paragraph 307o of Order 1050.1E, ARP has no discretion in deciding the use of that funding. That decision is solely the SBGP agency's. As a result, ARP has no NEPA responsibilities since it lacks authority over the airport projects the SBGP monies finance. However, readers should note that paragraph 213.a clearly states that ARP does retain NEPA responsibilities for that portion of an SBGP airport action for which an SBGP agency requests AIP discretionary funds to supplement SBGP funding. In this case, ARP must meet its responsibilities under NEPA and other applicable special purpose law because it is exercising discretion regarding the allocation of the additional funds.

Regarding the commenters concern about "NEPA-like" laws, ARP notes that paragraphs 212.b and c address this concern. Paragraph 211 underscores that once ARP issues the SBGP funds to participating states, ARP has no discretion on the airport projects on which the States spend their SBGP funding. Therefore, Federal environmental requirements do not apply to those actions. However, to maintain environmental stewardship, FAA imposes a contractual agreement on states participating in the SBGP. The

<sup>8</sup>Comments on Order 5050.4B Preamble, personnel communication from Edward A. Boling, Council on Environmental Quality to Edward Melisky, FAA, dated April 9, 2006.

agreement requires the SBGP state to meet applicable environmental requirements to ensure the SBGP participants use a rational, interdisciplinary, and proven method to analyze airport project impacts on environmental resources. Paragraph 212.b notes, a "NEPA-like" SBGP participant may use the State's NEPA-like requirements in lieu of this Order. This practice is consistent with CEQ policy regarding integration of procedures (40 CFR 1500.2) and requirements addressing reductions of paperwork and delay (40 CFR 1500.4 and 1500.5, respectively). States not having "NEPA-like" laws must comply with the requirements of Order 5050.4B. In both instances, the participating SBGP state must also meet special purpose laws outside NEPA.

ARP appreciates the commenter's suggestion that ARP use the commenter's program delegating environmental responsibilities to states. But because ARP is not delegating any of its responsibilities, there is no need to develop a delegation agreement with its SBGP participants. Once ARP approves the grant of block funds to a participating state under 49 U.S.C. 47128, that state assumes administrative responsibility for all airport grant amounts available under Subchapter 1 of Chapter 471, except those funds for primary airports. However, ARP does oversee the SBGP to ensure participants are meeting their contractual agreements.

*Streamlining:* A commenter does not think any streamlining rule that rushes the NEPA process is a good one. The commenter considers the rule as a "euphemism used to conceal and deceive the public" about aviation's environmental destruction. The commenter opposes every proposal the Order contains because the Order's main purpose is to promote aviation's benefit and destroy the environment. The commenter also states that wildlife hazard management is intended to kill wildlife. The commenter also requests a copy of the Best Practices. *ARP's Response:* ARP prepared the streamlining instructions in Chapter 15 of the final Order to address Congressional and Presidential requirements in Vision 100 and Executive Order 13274, respectively.

ARP stresses sponsor-prepared and implemented wildlife management plans help reduce injuries and deaths to millions of passengers, birds, and other wildlife species resulting from aircraft-wildlife collisions. ARP's requirements for airport sponsors to control wildlife species, especially those that have regularly been involved in aircraft-

wildlife collisions, are parts of the agency's airport certification program. This program is needed to address the agency's mission to provide safe, efficient air transportation for the nation. It also helps to reduce wildlife populations near airports. This, in turn, helps to reduce wildlife mortality, which often occurs when these animals collide with aircraft.

**Surface transportation and cumulative impacts:** Two commenters note these topics have become important for airport actions. They recognize Order 5050.4B provides greater guidance on cumulative impacts than Order 1050.1E, but suggest Order 5050.4B include more information on these topics. One commenter notes that surface transportation issues have become major EIS and EA topics due in part to associated air quality impacts on National Ambient Air Quality Standards and community concerns about road congestion. The commenter requests that the Order provide more information on these topics and notes Order 1050.1E does not address them. The commenter further notes induced secondary impacts typically address these issues, because they are among the most complex an EA or EIS addresses. Another commenter states the Order should explain the airport sponsor's role during scoping. *ARP's Response:* ARP agrees these are topical, difficult subjects. Paragraph 1007.i of the Order provides a summary of information on cumulative impacts, but ARP will provide more detail on this topic in the Desk Reference. Until ARP issues that information, document preparers and reviewers should use information in paragraph 1007.i, paragraph 500c of Order 1050.1E, CEQ's guidance on assessing cumulative impacts, Considering Cumulative Effects Under the National Environmental Policy Act (<http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>) and CEQ's June 24, 2005, memorandum addressing cumulative effects and past actions. The Desk Reference will address the topic of surface transportation and its relationship to air quality effects.

#### **Beginning Responses to Comments on Specific Paragraphs of the Draft Order**

**Preface comments:** Two commenters suggested adding language to the Preface to note the Order provides NEPA guidance for ARP. If conflicts between this Order and Order 1050.1E exist, users are to follow the instructions in 1050.1E. In that case, FAA personnel may follow the instructions in Order 5050.4. The commenters note that Order 5050.4A lacked a process for updating its content, so the commenter suggested

that the Preface explain how FAA would update Order 5050.4B. *ARP's Response:* ARP agrees. ARP has placed the information the commenters suggest in the Order's revised Introduction.

**Introduction comments:** A commenter suggested adding a clarifying statement about reasonable alternatives. Those alternatives should meet the purpose and need and FAA's mission to provide safe, efficient air transportation for the Nation. *ARP's Response:* We agree in part and respectfully disagree in part. ARP has revised the text addressing this topic and placed it in paragraph 504.d of the Order. That paragraph notes that the range of alternatives developed during airport planning differs from that FAA examines during the NEPA process. As paragraph 504.d(2) notes, the range of reasonable alternatives FAA considers during NEPA must include alternatives developed during project planning and those reasonable alternatives outside the airport sponsor's and FAA's jurisdiction. Therefore, FAA agrees that these alternatives should meet purpose and need, but it disagrees with the commenter's clarification due to the requirements of 40 CFR 1502.14(c). That would be inconsistent with 40 CFR 1502.14(c), which states agencies: "shall include reasonable alternatives not within the jurisdiction of the lead agency." Including the statement regarding FAA's statutory mission in the final Order could be misconstrued. Doing so could mean that FAA has adopted the statutory objectives test to narrowly define a purpose and need that would exclude reasonable alternatives from NEPA analysis.

**Chapter 1 comments:** ARP received no general comments on this chapter. Regarding paragraph 1, one commenter stated the paragraph extends NEPA's reach. Another commenter stated that this description of objectives is incomplete because it omits important detail from 40 CFR 1500.1 and focuses solely on public disclosure. Both commenters recommend using different text to more accurately describe NEPA's intent. One commenter suggested using the entire statement of objectives from 40 CFR 1500.1(a) or paragraph 10a from Order 5050.4A, the other recommended the text from paragraph 200.a of draft Order 5050.4B. *ARP's Response:* Agree. ARP revised paragraphs 1 and 2 to better reflect NEPA's intent using information in 1500.1(a). ARP deleted paragraph 200.a. as written in the draft Order because it was somewhat duplicative.

Two commenters state that paragraph 3.d should note the Order should strengthen the explanation of how ARP

addresses special purpose laws. The Order should relate that presentation to the laws' application in a NEPA context. *ARP's Response:* Agree. Paragraph 9.t explains this.

Comments on paragraph 8 varied. This paragraph contained several subparagraphs defining many of the terms the Order uses. Another commenter sought definitions for "mitigated FONSI" and "special protection laws." Other commenters sought definitions for or clarifications of the terms: "Airport Improvement Program;" "day-night average level;" "expertise agencies;" "joint lead agency;" "major Federal action;" "major runway extension;" "reasonably foreseeable action;" "responsible FAA official;" "significant impact;" "special purpose laws;" "special protection laws;" "supplemental EIS;" and "written-re-evaluation." Another commenter urged the use of "highly controversial action" as defined in Order 1050.1E. *ARP's Response:* Readers should note that the final Order now presents definitions in paragraphs 9a.-9v. Document re-organization caused this paragraph re-numbering. ARP has enhanced many of the definitions these paragraphs provide. Readers should note that the draft Order used the terms, "special purpose laws" and "special protection laws" synonymously. For consistency, the final Order uses only "special purpose laws." Also, the final Order contains a more complete list of laws, regulations, and executive orders comprising the term, "special purpose laws." Order 5050.4B has incorporated Order 1050.1E's definition of the term, "highly controversial action" and more information on "written re-evaluations." Paragraph 1402 provides a more comprehensive discussion for supplementing NEPA documents.

**Chapter 2 comments: General Chapter 2 Comments:** A commenter stated the text in the draft Order was not clear regarding NEPA's applicability to ALP changes not involving Federal funding. *ARP's Response:* ARP addresses this issue in paragraph 202.b of the final Order. The paragraph states FAA must comply with NEPA and other applicable special purpose laws when unconditionally approving ALPs whether or not the approval involves Federal funding (paragraph 9.g (3)).

Another commenter suggested the note on the Desk Reference following paragraph 200.d of the draft Order stress that ARP will provide the Desk Reference to clarify applications of significance thresholds in Order 1050.1E, Appendix A. The commenter suggests that Order 5050.4B modify



thresholds to eliminate their ambiguity. *ARP's Response:* Order 5050.4B deleted the note. Readers should see that Table 7-1 presents the agency's significance thresholds per Order 1050.1E, Appendix A. ARP is not authorized to modify any of the thresholds because Order 1050.1E, as the agency-wide document, provided those thresholds for public review and they are the thresholds FAA established for all FAA organizations. Although ARP can petition the Office of Environment and Energy (AEE) to change the thresholds, only AEE is authorized to do so. But before making changes, AEE will provide the public an opportunity to review changes or additions to the thresholds because they would change the agency's Order implementing NEPA. Readers should note that column 3 of Table 7-1 presents information to help Order 5050.4B users determine airport-related impacts relative to the stated thresholds. These factors are based on information in paragraphs 47.e and 85.a-t of Order 5050.4A that ARP staff and others have found valuable in determining impact significance for airport actions during the past 20 years. Because airport actions often physically disturb more land or water areas than most other FAA actions, ARP includes that information for convenience and because of its analytical value. Doing so also addresses a comment from some reviewers who noted that Order 5050.4A contains useful information that Order 5050.4B should include.

Regarding paragraph 200.c, a commenter states that FAA must evaluate more than environmental factors in its NEPA process. Other commenters ask if NEPA applies to ALP and Passenger Facility Charges (PFC). *ARP's Response:* ARP concurs and has revised the wording. Paragraph 200.a(2) notes the agency considers other factors (e.g., economic, technical, safety) as well as environmental factors. The intent of the sentence was to stress that FAA must weigh environmental factors in its decisions. That paragraph also uses the term, "Federal actions," a term including PFC and ALP approvals per paragraph 9.g of the final Order.

Addressing comments on paragraph 201.b(1), a commenter recommends deleting "FAA-funded" master plans. *ARP's Response:* Concur. Revised paragraph 201.b(1) tells airport sponsors to consider environmental factors in master planning, regardless of the funding source used to develop that planning. This should help enhance the subsequent NEPA process ARP would complete to make a decision on the planned airport projects master plans address.

Regarding paragraph 201.b(4), a commenter seeks clarification on the need for a SBGP participant to consult with federally-recognized Tribes on a government-to-government basis. The commenter notes if a SBGP agency is authorized to conduct direct consultation after initial FAA/Tribal contact, the Order should state so. Another commenter notes a public hearing or meeting is not needed for all NEPA actions. *ARP's Response:* Paragraph 212.e of the final Order clarifies SBGP and Tribal consultation. The paragraph states if an FAA organization is involved in an action associated with an SBGP airport action, the responsible FAA organization will conduct the Tribal consultation. If there is no FAA involvement, the SBGP agency should follow instructions in paragraph 303 of the Order, to ensure Tribal consultation occurs in a respectful manner. SBGP agencies should note that regional and district ARP office personnel are available to aid the SBGP agency in this consultation. That paragraph and other paragraphs in new Chapter 3 (Agency and Tribal Coordination) developed for the final Order discuss how FAA personnel will conduct Tribal consultation according to FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation and Policy and Procedures.

ARP concurs with the comment that public hearings are not needed for all NEPA actions. Revised text in paragraph 201.b(4) adds the words " \* \* \* if one is appropriate" to clarify that not all NEPA actions require a hearing.

Concerning paragraph 203.a, a commenter requests information regarding the need to consult with FAA when an SBGP action requires an EIS. The commenter wants to know if the airport sponsor or the state agency is responsible for consulting with FAA regarding EIS preparation in this case. *ARP's Response:* Paragraph 214.d(2)(a) of the final Order clarifies this issue. When ARP or another FAA organization has an action connected to a SBGP project, the FAA organization responsible for the connected action will be a joint-lead agency with the SBGP agency to ensure the document also meets the requirements of Order 1050.1E and Order 5050.4B. As needed, the SBGP and/or the FAA organization may request assistance from the appropriate regional or district ARP office or ARP's Airports Planning and Environment Division (APP-400). Although these ARP offices are not responsible for preparing EISs for all SBGP connected actions, they have experience that may aid the SBGP agency and other FAA organizations in

document preparation. This involvement may also help ensure efficient information exchanges and proper consultation among the SBGP, agencies, and interested parties occurs. In those rare cases, where there is no FAA organization involved, the state agency follows instructions in paragraph 214.d(1) of the final Order.

Regarding paragraph 205, a commenter complimented ARP for recognizing the public's participation in airport review. Another commenter requests more information on obtaining public involvement during EA scoping or for categorically excluded actions. *ARP's Response:* The agency appreciates the comment. Now, this information is part Chapter 4 of the Order, which focuses on public involvement. Also, paragraph 704 discusses public involvement in EA preparation. Paragraph 606.b discusses public involvement requirements of special purpose laws and categorically excluded actions. The reader should note that FAA must complete public involvement requirements before categorically excluding an action, if the potential extraordinary circumstances relating to the proposed action involve special purpose laws having public involvement requirements.

*Chapter 3 comments:* General Chapter 3 Comments: A commenter states "one reason some environmental reviews take so long is the disconnect between physical/facility planning and environmental review. Projects are not sufficiently defined before the NEPA process begins. FAA is revising the advisory circular (AC) concerning master planning. There needs to be close integration between this chapter, particularly 302, and the revised master planning AC. If master plan analysis more closely resembled NEPA analysis on such major issues as project purpose, alternatives and environmental impacts, planning, projects and environmental reviews would be improved. This chapter should encourage that planning. *ARP's Response:* ARP agrees it sometimes begins the NEPA process prematurely. However, ARP wishes to note that this "premature start" is often in response to airport sponsor desires or demands to force ARP to begin the NEPA process before the sponsor completes the planning for which it is responsible.

ARP agrees that Order 5050.4B should reflect some of the concepts on critical NEPA and planning issues like project purpose, alternatives, and other topics that the master planning AC discusses. The draft Order had some information on the NEPA/planning connections, but ARP has greatly enhanced this

information in the final Order. New Chapter 5 addresses early airport planning and NEPA. The chapter contains planning information from the master planning AC and ARP's Best Practices Web site. ARP hopes that the new chapter and AC improve the coordination between airport planners and environmental specialists so airport planning and NEPA processes are more efficient and effective.

Regarding paragraph 300.a, another commenter stated the Order should clarify that the approving FAA official must evaluate an airport action's environmental effects and issue a "NEPA decision" approving that action. *ARP's Response:* Agree. New paragraph 500.b highlights the need for the approving FAA official to issue a FONSI or ROD or categorically exclude an airport action before an official approves the action.

Concerning paragraph 300.b, another commenter suggested that the Order reinforce the requirement that the NEPA process is an independent process, not intended to justify a proponent's action. *ARP's Response:* Agree. New paragraph 500.a enforces critical NEPA principles of objectivity and good faith.

Regarding paragraph 300.c, the same commenter disagreed with the paragraph's requirement for the responsible FAA official to work more closely with airport planners early in the planning process. The commenter stated this would commit FAA to expanded roles that would have to be embraced to make the process work smoothly. *ARP's Response:* ARP realizes that earlier involvement places a workload on FAA personnel. However, this involvement should reduce delays during the subsequent NEPA process by addressing flaws and gaps in planning data that could delay that process. Chapter 5, particularly paragraph 501, emphasizes the need for better coordination between planners and environmental specialists. This will improve the efficiency and effectiveness of the planning process and the subsequent NEPA process.

Two comments on paragraph 301.b sought a definition for the term "practicable alternative." Another stated the Order should tell airport sponsors to tell the surrounding communities about the sponsor's proposed actions. *ARP's Response:* The final Order deleted this term. Instead, paragraph 706.d(6) of the Order notes that "reasonable alternatives" are those choices the airport sponsor (or FAA) has developed to address the problems the sponsor faces. That section also states that agencies must include reasonable alternatives not within the jurisdiction

of the lead agency (see response to Introduction). Those alternatives would also include Paragraph 706.d provides more information on alternatives. It emphasizes that an EA must address reasonable alternatives in addition to the No Action and Proposed Action when there is an unresolved conflict regarding alternative uses of available resources (paragraphs 706.d (5) and (6)).

Regarding the comment on telling surrounding communities about proposed actions, paragraph 501.a of the final Order notes the importance of considering community concerns about aircraft noise during the planning process. In addition, new Chapter 4 on public participation provides more information on how airport sponsors and FAA alert and engage surrounding communities about proposed airport projects. As Chapter 4 of the final Order and the AC on master planning emphasizes, the airport sponsor is responsible for informing and engaging the public during the sponsor's planning efforts.

Starting comments on paragraph 302. Another commenter made a general comment about the statement that a sponsor identifies its proposed actions during master planning. According to the commenter, this " \* \* \* could appear that FAA encourages sponsors to make a decision too early in the NEPA process." The commenter notes this may give the appearance that FAA encourages sponsors to make decisions before FAA complete the NEPA process. The commenter also argues the purpose and need should be part of master planning. *ARP's Response:* ARP appreciates the comment on using the words, "proposed action," but we see no conflict with NEPA. Many airport sponsors identify a proposed action during master planning to address the issues the airport sponsor is attempting to solve. ARP sees no harm in the airport sponsor identifying a proposed action, provided sponsors and the public realize ARP is not obligated in any way to approve the sponsor's proposed action. The "proposed action" may be, but is not necessarily the agency's "preferred alternative." The proposed action may be a proposal in its initial form before undergoing analysis in the NEPA process, " \* \* \* a proposed action may be granting an application to a non-federal entity for a permit" (Forty Most Asked Questions (46 FR 18025, March 23, 1981, as amended 51 FR 15619, April 25, 1986, Question 5a). As ARP may not have a preferred alternative until it issues a draft or final EIS, ARP is able to rebut any claims of bias that may result from a sponsor identifying a proposed action.

In response to the comment that, "purpose and need" during planning, should be part of the master plan, we respectfully disagree. "Purpose and need" is a term of art under NEPA. Although the master plan considers environmental factors, it is not the NEPA process nor should it be. Master planning is the sponsor's responsibility, while NEPA is FAA's. To avoid confusing planners and others preparing master plans and NEPA documents, ARP avoided using the term "purpose and need" for planning purposes in Chapter 5.

A commenter recommended revising paragraph 302.a to include some discussion about the need to compare a sponsor's airport master plan forecasts and FAA's Terminal Area forecasts. *ARP's Response:* Agree. The final Order discusses the need for reasonable consistency between a sponsor's forecasts and FAA's Terminal Area Forecast (TAF) to ensure the scientific integrity of the discussions and environmental analyses in NEPA documents for airport actions. Paragraph 706.b(3) of the final Order provides instructions for handling variations in forecasts.

Regarding paragraph 302.b one commenter suggested deleting the discussion of airport noise compatibility planning because 5050.4B was not the place to define master plan requirements except to the extent that they facilitate NEPA processing. This commenter also indicated that paragraph 303 was ample to address noise compatibility planning. Another commenter indicated that the text as drafted suggested that noise issues should be addressed in the master plan, not an airport noise compatibility program. *ARP's Response:* Agree. Although Order 5050.4A discussed airport noise planning under 14 CFR part 150 (Airport Noise Compatibility Planning), we have eliminated it from this Order. Revised paragraph 503.c notes that airport planners should consider noise when planning an action because noise is often the public's primary concern regarding airport actions. Knowing the locations of noise sensitive land uses relative to a proposed action's environmental impacts provides valuable information during the subsequent NEPA process.

Concerning paragraph 303 in general, a few commenters disagreed with the following language in the draft Order dealing with project specific noise impacts and part 150, "the sponsor may not delay the proposed action's mitigation for inclusion in an NCP that would be prepared after the EA or EIS is completed." One commenter noted

that this would obligate sponsors to mitigate for actions that FAA might approve, while the other stated, “meaningful noise mitigation cannot be defined during the NEPA process, particularly when litigation is expected.” *ARP’s Response*: ARP has revised paragraph 706.g(3) to clarify that FAA may not rely upon a commitment by an airport sponsor to conduct a study under 14 CFR part 150 as mitigation measure in an EA or an EIS. Rather, a part 150 study may only be used to identify mitigation measures if the study is completed concurrently with the EA or EIS. Contrary to the first commenter, the mitigation measures would be identified not in advance, but at the same time that FAA makes its decision concerning the proposed action. We believe that meaningful noise mitigation can be identified during the NEPA process. Mitigation measures approved in an environmental Record of Decision for an airport development project may now be funded using amounts available under the noise set aside in the discretionary fund under 49 U.S.C. 47117(e). Therefore, there is no need for airport sponsor to prepare noise studies under 14 CFR part 150 with EISs to gain access to noise set aside funds.

One commenter stated that paragraph 303.b should require public involvement for categorically excluded actions. *ARP’s Response*: Agree in part. Paragraph 606.b of the final Order discusses public involvement and CATEXs. The reader should note that ARP must complete all public involvement requirements for CATEXs if the actions involve extraordinary circumstances based on special purpose laws having public involvement requirements.

A commenter noted that paragraph 303.c should include the California Noise Equivalent Level (CNEL) metric. Another commenter noted the DNL 65 dB level is not always FAA’s significant noise threshold, especially for Section 4(f) or historic resource impacts. Yet another commenter noted that FAA should use noise levels below the DNL 65 dB level to determine noise effects. *ARP’s Response*: ARP agrees with the comment on CNEL. The revised Order references CNEL as an acceptable metric in paragraph 9.n. Regarding the significant noise threshold, readers should review FAA’s response to this issue in its **Federal Register** Notice of Availability of Order 1050.1E (69 FR 33818–19, June 16, 2004). As stated in Order 1050.1E, Appendix A, section 14.3, “[s]pecial 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.” Order 1050.1E, Appendix A, section 14.5g states that “the FAA will consider use of appropriate supplemental noise analysis in consultation with the officials having jurisdiction” over such areas. Table 7–1 of final Order 5050.4B incorporates this information.

Concerning paragraph 304, two commenters seek clarification of the objectives noted in the paragraph. *ARP’s Response*: As written, the paragraph indicated that ARP would analyze the data provided and determine if more information were needed to address issues or problems. The second objective was to determine the proper environmental analyses. ARP has revised this paragraph, which is now paragraph 506 of the final Order. The paragraph states that during project planning the responsible FAA official will determine, via an interdisciplinary approach and working with the airport sponsor, the probable environmental evaluation a proposed action warrants.

Concerning paragraph 304.b, a commenter suggests ARP review Tables in the draft Order listing CATEXs to ensure they include all airport actions listed in paragraphs 307–312 of Order 1050.1E. The commenter noted the Tables did not contain all actions and this could mislead the public about airport actions that are categorically excluded. *ARP’s Response*: Agree. ARP has revised Tables 6–1 and 6–2 to include airport actions the draft Order inadvertently omitted.

Regarding paragraph 304.b(1), a commenter rightly noted this paragraph was not consistent with paragraph 403.b, which provided clearer guidance on when FAA may CATEX an action similar to ones listed. The commenter notes some FAA offices have categorically excluded an action if it fits into a category. This appears to be counter to the instructions in Order 1050.1E, paragraph 303c, which states FAA may categorically exclude only listed actions. *ARP’s Response*: Agree. The draft Order did not properly convey the instructions in Order 1050.1E. Paragraph 601 of the final Order clarifies the draft’s instructions. In particular, paragraph 601 addresses other actions that may be categorically excluded provided they are similar to those listed in paragraphs in Order 1050.1E.

A general comment on paragraph 305 emphasized the need for clearer instructions on minimum public involvement for actions an EA addresses. The commenter wants to know if all draft EAs are subject to public review and if the sponsor must respond to comments on a draft EA the way FAA must respond to comments on a draft EIS. Another commenter suggested deleting the word, “Environmental Assessment” from the section title because information in the paragraph also pertains to EISs. *ARP’s Response*: Agree in part, disagree in part. We agree with the commenter about the section title. ARP replaced the words “Environmental Assessment” in the title of paragraph 301 with “the Environmental Review Process.” We included paragraphs 301 and 704 to emphasize requirements under 40 CFR 1501.4 for Federal agencies to involve the public to the extent practicable in preparing EAs. As to whether comments on a draft EA have to be responded to in the way FAA responds to comments on a draft EIS, the approach depends upon the complexity of the matter involved. Generally, responses to comments on a draft EAs may be less comprehensive and detailed.

For paragraph 305.b, a state agency noted that cooperating agency status applies only to EISs. The paragraph is wrong in stating cooperating agency status is warranted for EAs and warns ARP about using CEQ terms in the wrong context. Another commenter objects to public review before the final EA is submitted to FAA. The implication is comments on the draft EA are used in preparing the final EA. The commenter seeks clarification on the need for a draft and final EA for all actions. Finally, although involving the public in the EA process is prudent, requiring drafts, comment periods and final EAs in all circumstances is “resource intensive.” *ARP’s Response*: Disagree with the comment addressing cooperating agencies and EAs. Although the commenter is correct in stating that CEQ regulations only address adoption of EISs, the objectives of reducing delays and eliminating duplication underlying the adoption provisions apply to adopting EAs. “Consequently, the Council encourages agencies to put in place a mechanism for adopting environmental assessments prepared by other agencies.” (See Memorandum: Guidance Regarding NEPA Regulations, at 48 FR 34263, July 28, 1983). FAA established agency-wide procedures for adopting EAs in paragraph 404d of 1050.1E and 5050.4B must conform to those procedures. Regarding the second

commenter's input, ARP agrees with the commenter's interpretation of the instruction that, "public review for draft EAs is important and should be considered when preparing the final EA." Regarding the need for a draft and final EA for all actions, typically this is the case. Rarely does ARP accept the initial EA as a final. Finally, readers should note ARP is not requiring public review for all draft EAs. That review is warranted when a public hearing will occur (see paragraph 708 of the final Order), but the need for such review in other situations is left to the responsible FAA official's discretion.

Concerning paragraph 306, a commenter suggests that state and local review processes should include local municipalities. *ARP's Response:* Agree. The draft text assumed readers would include affected municipalities in their consultations. Paragraphs 301 and 302 of the final Order note that the term, "local agencies" includes municipalities and why their input can be important.

Addressing a comment on paragraph 306c, a commenter notes, in its opinion, there are five steps to realize a project. These are planning, engineering, environmental review, financing, and construction. The commenter states the first and last steps are clearly defined, but the others are not, so it recommends the Order address them. It should address the 20% limit on engineering drawings noted later and the fact that infrastructure projects can have a logical purpose and need, but won't occur if they are not AIP eligible or financed. Another commenter believes requesting review agency consultation is excessive. *ARP's Response:* Addressing the "five steps," ARP agrees they are critical. Readers should note the Order addresses how four steps relate to the NEPA process (actual construction is not discussed). Chapter 5 of the Order addresses the relationship between planning, which includes cost estimates and construction plans, and environmental review. Paragraph 1004 addresses the relationship between engineering (the level of engineering drawings) and environmental review. ARP recognizes that there is a need to consider financial costs in identifying reasonable alternatives under NEPA. Eligibility for federal funding or use of passenger facility charges could affect the range of alternatives studied under NEPA. However, ARP does not agree with the commenter that this Order, prepared for NEPA compliance, should address planning, engineering, financing or construction as distinct topics. Beyond the manner in which they bear upon NEPA review, instructions concerning these matters

are outside the scope of this Order. ARP's Financial Division (APP-500) has issued guidance for financial assistance, including Order 5100.38, Airports Programming Handbook and FAA Policy and Final Guidance Regarding Benefits Cost Analysis on Airport Capacity Projects for FAA Decisions on Airport Improvement Program Discretionary Grants and Letters of Intent, (64 FR 70107, December 15, 1999). ARP's Engineering Division (AAS-100) is available to help sponsors and other interested parties with design and construction plans. Turning to "excessive" agency consultation, ARP disagrees. When reviewing an EA or information supporting a CATEX, agency input is critical to ARP's determination of impacts and the proper NEPA document. These instructions ensure the responsible FAA official has the agency input needed to complete the NEPA process efficiently and effectively.

Concerning paragraphs 306.c(1) and (2), a commenter noted the 60-day and 45-day periods signaling the start of agency or Tribal consultation are inconsistent. Another commenter suggests the time frames are too short and seeks to tie the consultation to Capital Improvement Plan data sheets or grant application submittal. Non-agency commenters sought clarification of the 45-day period regarding ALP approvals that do not involve Federal funding. The commenters think this requirement will unnecessarily delay approvals of certain categorically excluded actions and needs to provide some flexibility. Another commenter wants ARP to omit the specified time frames and substitute "reasonable timeframe." Another commenter urges ARP to include EISs in this discussion, since Order 1050.1E directs FAA personnel to ensure compliance with NEPA. The same commenter notes that agencies are reluctant to begin consultation before FAA has determined an EA or EIS is needed. The commenter suggests deleting the discussion when a sponsor is not seeking AIP funding, since the opening sentence addresses AIP funding. *ARP's Response:* Regarding the comment on timing consultation, ARP disagrees. The draft's paragraphs properly highlighted different time sequences, depending on the sponsor's need for AIP funding. The times are needed to ensure proper consultation occurs for the NEPA process. To better reflect AIP funding and review needs, paragraph 302.b(2) of the final Order clarifies the start of this consultation. After consulting with the Airports Programming Division (APP-500),

ARP's office responsible for AIP financing, we revised paragraph 302.b(2) to meet financial reviewer needs as well as those of environmental specialists. The paragraph now states the sponsor should start consultation so there is sufficient time to enable the sponsor to file the final EA with ARP by April 30 of the fiscal year (FY) preceding the FY the sponsor seeks discretionary AIP funding for the action. If the sponsor seeks no AIP funds, paragraph 302.b(3) states the consultation should begin at a time that is sufficient for FAA to complete its NEPA review and accommodate the sponsor's schedule.

Addressing other comments on time frames, ARP declines to add EISs to this discussion. The intent of instructions in 302.b is simply to help airport sponsors schedule the start of consultation for documents they prepare. Since FAA is responsible for preparing EISs for most airport projects, ARP believes paragraphs 302.b(2) and (3) address the commenter's concerns. The new instructions highlight the need for airport sponsors to determine the "reasonable timeframes" to meet consultation requirements and their schedules. This provides the flexibility commenters sought. ARP emphasizes that sponsors should not delay consultation, since it is crucial to ARP completing the NEPA process.

Addressing the last comment, ARP disagrees with the commenter's suggestion to delete the information addressing ALP approvals not involving Federal funding. The Order should address common situations, so ARP includes the information in paragraph 302.b(3) of the final Order to address this rare scenario.

Regarding paragraph 306.d, a few commenters noted the confusing language this paragraph contains. One commenter suggests the 30-day period that must elapse between issuance of opportunity for a public hearing and the hearing itself is the maximum time allowed. The commenter also asks if the hearing must occur before or after the draft EA is published. Another commenter states that the instructions require punctuation and clarification. A third commenter states that requiring two notices (opportunities for a public hearing and document availability for the hearing) is unnecessary. One notice should be sufficient. A fourth commenter suggests that the FAA define what it means by "expertise agency." Without this, the commenter is concerned NEPA documents would contain unnecessary information. The commenter also suggests the term is different from State, local and Tribal

entities mentioned elsewhere. *ARP's Response*: ARP agrees the draft instructions were confusing. The "Notice of Opportunity for a Public Hearing" tells the public that it may request a hearing for an action. The "Notice of Public Hearing" tells the public that the sponsor, in response to public's review of the "Notice of Opportunity for a Public Hearing," has determined a hearing will occur. Paragraphs 404 and 406 of the final Order clarify these points. Paragraph 404.a(4) notes the draft NEPA document must be available to the public for a 30-day period to help people prepare for the hearing. Paragraph 406.b states that 30 days must elapse between the "Notice of Public Hearing" and the time the hearing will occur. Finally, regarding the term, "expertise agencies," paragraph 9.f of the final Order defines this term. It means "a Federal, State, local, or Tribal government agency with specialized skill or technical knowledge on a particular environmental resource."

Concerning paragraph 307.f, an SBGP commenter seeks clarification on resolving issues at state levels. The commenter notes that sending unresolved issues to DOT's Secretary for Administration is excessive. The particular block grant agreement designates the State with the responsibility to resolve the SBGP issues. *ARP's Response*: Comment noted. Readers should review this Preamble's paragraphs b, k, and State Block Grant Program section for more information on the roles of State agencies participating in the SBGP. Participating state agencies should use instructions in paragraphs 210-214 of the final Order to help them address environmental effects SBGP actions may cause. They should also use those instructions to determine if FAA retains authority for any actions connected to the airport action under the SBGP.

Concerning non-state block comments on paragraph 307.f, to avoid confusion, another commenter mentions the paragraph should emphasize FAA reaching agreement with the sponsor before making the EA public and if agreement isn't possible, to advise the sponsor that FAA cannot accept the sponsor's EA. Another commenter states FAA should not be involved in resolving issues, unless there is a Federal tie and the intervention should not occur until an EA receives public review. The commenter also states elevation of an issue to the DOT is inappropriate, unless the issue has national importance. *ARP's Response*: ARP concurs that agreement on important issues is critical in preparing

any NEPA document. It is the responsible FAA official's duty to work with the sponsor to reach that agreement. However, due to conflicting opinions on environmental issues, agreements do not always occur. To address this, the final Order (paragraph 707.d), as Order 5050.4A did, discusses how the responsible FAA official might be able to help resolve disagreements. This information is helpful in determining if an EA is appropriate for an action or if FAA must prepare an EIS.

Responding to the second commenter, ARP points out there would be no need for a NEPA document unless a "Federal nexus" existed. ARP disagrees that its personnel should wait until an EA is available for public review before it tries to aid in resolving a problem. That is not efficient or effective project or NEPA management. In addition, the public does not review all EAs, yet they may still require ARP assistance to resolve issues. Further, when possible, ARP prefers to work out solutions to problems before issuing an EA for public review. This provides the public with a more valuable document, shows that a disagreement existed, and the agencies worked to solve it, proving no one "rubber stamps" actions. Finally, citing the DOT Assistant Secretary in the instructions, shows the various governmental levels that may be needed to resolve an airport issue. Of course, it is the ARP official's decision to determine the process he or she will use in trying to resolve an issue. Knowing this, ARP doubts its personnel would contact DOT, unless the disagreement involved a matter of national significance or otherwise warranted DOT involvement.

Turning to comments on paragraph 307, a commenter suggested that the Order define the term, "public hearing" to reflect various ways to collect and exchange information with the public. Experience shows informal venues often provide the best flow of information between FAA and the public. The same commenter also notes that airport sponsors often conduct "local public meetings to discuss future development." The commenter states the Order should discuss these meetings and how they relate to the "FAA public forum." *ARP's Response*: ARP agrees with the comment that there are many informal and highly effective ways to involve the public in planning future airport development projects and in the NEPA process. However, the comment mistakenly assumes that public involvement is the same as a public hearing. NEPA requires opportunities for public involvement, including opportunities for review and comment

in some cases, but not public hearings. "Public hearing" is a term of art under 49 U.S.C. 47106(c)(1)(A)(i), pursuant to which airport sponsors must certify that they have afforded the opportunity for a public hearing to qualify major airport development projects for federal grant funding. ARP recognizes that the most important aspects of a traditional, formal hearing are that a designated hearing officer controls the gathering and there is an accurate record of the major public concerns stated during the gathering. Such criteria are viewed by some as crucial to agency decision making because they provide the approving FAA official and other interested parties with information on topics of paramount concern to interested parties. ARP declines for the first time in this final Order to define the term public hearing for purposes of 49 U.S.C. 47106(c)(1)(A)(i) and NEPA, including whether a public hearing may take forms other than the traditional one. Addressing the request for information to distinguish "local" and "FAA" forums, ARP notes that it believes the commenter's request addressing "local" forum relates to public participation in master plan development (*i.e.*, "future development"). In ARP's opinion, hearings for master planning are outside the NEPA process and are parts of airport sponsor planning responsibilities. Therefore, the sponsor may follow any procedures it wishes to inform and conduct those meetings. Readers should note the final Order's public hearing instructions at paragraph 404.b apply to those airport actions mentioned at 49 U.S.C. 47016.(c)(1)(A)(i) requiring the sponsor to provide opportunities for a public hearing. More instructions at paragraph 403.c discuss other actions that may warrant a hearing to help the sponsor and FAA address other public concerns.

In discussing paragraph 307.a, one commenter wants clearer instructions about giving out information to the public as it prepares for a public hearing. The commenter also suggests there should be two public hearings, one to provide information to the interested public, a second for comments after the public has thought about the information. *ARP's Response*: ARP agrees the public should have access to information to prepare for hearings or meetings. Paragraphs 404.a and 708 of the final Order discuss this. Paragraph 404.a states the "Notice of Opportunity for a Public Hearing" must provide information on various project issues and where and when the public may review the draft EA or EIS over a

30-day period. Paragraph 708 tells airport sponsors that the responsible FAA official should review a draft EA before the sponsor issues it to the public preparing for a public hearing. FAA's review ensures the draft EA the public will study adequately reflects FAA policy and concerns before the public sees the document. In addition, many draft EAs and EISs are on publicly accessible Web sites; this helps to further distribute information for public hearings and public reviews. ARP disagrees with the commenter's recommendation to conduct two public hearings. ARP believes distributing the "Notice of Opportunity for a Public Hearing," the draft EA, and conducting the hearing satisfy the reasons the commenter cites for conducting two meetings. Reviewing the draft EA and other information provides facts to the public about an action. The meeting itself gives the public the opportunity to present its concerns about issues the EA discusses.

Concerning paragraph 307.b, one commenter seeks clarification on an obvious inconsistency regarding the draft Order's instructions addressing the opportunity for a public hearing. Another commenter states paragraph 307.a requires the sponsor to provide an opportunity for a public hearing, while paragraph 307.b appears to make the opportunity for a hearing optional. A third commenter suggested a revision to alert the public that a public hearing may be needed for reasons not addressed in paragraph 307a. *ARP's Response:* ARP does not agree an inconsistency in the paragraphs exists. The intent of paragraph 307.a is to alert the sponsor who intends to file a project grant application for a new airport, a new runway, or major runway extension that the sponsor *must* provide an *opportunity* for a public hearing. The sponsor must do so to comply with 49 U.S.C. 47106(c)(1)(A)(i). Paragraph 307.b (now paragraph 403) tells the sponsor and FAA they may provide an opportunity for a public hearing for other airport actions, after considering the specific factors mentioned in that paragraph. ARP sees no reason to modify these instructions.

A comment on paragraph 307.c noted that simply filing a draft EA with FAA before a public hearing occurs does not ensure the document would accurately reflect FAA policies and concerns. Modify the paragraph to ensure the draft EA addresses those policies and concerns. *ARP's Response:* Agree. Although we assumed the reader would understand the EA would need revision to address FAA concerns, we agree that statement is needed. Paragraph 708 of

the final Order conveys the commenter's suggestion.

Starting paragraph 307.d comments. Two commenters note that the requirement in paragraph 307.d(1)(d) requiring the public to send written comments in response to a public hearing within 14 days of the hearing is new guidance or a new requirement. They state the specified time is unnecessary. Another commenter states that paragraphs 307.d and 307.d(1) addressing the timing of the hearing relative to notice of the hearing contradict each other. Still addressing hearing timing, another commenter disagrees with the requirement to provide 30 days between the time the notice that a hearing will occur and the date the hearing will occur. This period with the 30-day period given to the public to respond to an offer to conduct a hearing gives the public at least 60 days to review a NEPA document. The commenter suggests providing a 15-day period between the notice announcing the hearing will occur and the hearing date. *ARP's Response:* Regarding the concern about time limits for submitting public hearing comments, ARP disagrees with the commenters' statement. ARP believes that some reasonable time to file comments is appropriate. ARP contends that failing to set that time could cause inefficient NEPA processing and result in documents that fail to include important concerns arising during public hearings. Therefore, paragraph 406.b(4) of the final Order tells the public to submit written comments within a 10-day period following the hearing or by the end of the NEPA document comment period, whichever is later. ARP has set this period to alert the public that project managers need timely public input to ensure NEPA documents address public concerns. Although no CEQ or FAA-wide requirements addressing public hearing comment submittals exist, ARP has established a reasonable time frame to help make its NEPA process more efficient and effective.

Turning to the comments on the "Notice of Opportunity for a Public Hearing" and the "Notice of Public Hearing," ARP has revised the information in paragraph 307.d (1)–(3) of the draft Order. ARP agrees the 60-day period between the "Notice of Opportunity for a Public Hearing" and the public hearing itself may be unnecessary. Therefore, paragraph 404.a(5) of the final Order provides a 15-day period for the public to decide if it wants a public hearing. Although, this time is 15 days less than the response time noted in draft Order at paragraph

307.c, ARP believes that 15 days is sufficient time for the public to review the information the "Notice of Opportunity for Public Hearing" contains and decide that it wants or does not want a public hearing. However, paragraph 406.b retains the 30-day period between the time the sponsor or FAA issues the notice that a public hearing will occur and the date of the hearing. ARP believes the 30-day period provides the public sufficient time to prepare for a public hearing.

Regarding paragraph 307.d(2)(c), a few commenters suggest deleting the reference to floodplain encroachment in the "Notice of Public Hearing." Citing only one of many resource areas could confuse the public that floodplain encroachment is the only impact an action would cause. *ARP's Response:* ARP agrees in part. It has revised the text that appeared in the draft Order. To ensure the public is aware of an action's potential environmental effects, paragraph 403.b of the final Order suggests that the Notice highlight potentially affected environmental resources especially floodplain, wetland or historic property impacts. Special emphasis is placed on these resources to meet the public involvement requirements of the special purpose laws protecting those resources. The sponsor or FAA should base the list on information in the draft EA or EIS available for public review as noted in paragraph 406.b(3) of the final Order. This revision would highlight and provide a more thorough list of project-related impacts.

Addressing comments on paragraph 307.f, ARP reports that two commenters stated requiring transcripts for all public hearings, including informal workshops, is unnecessary and to do so is costly. They agree formal hearings (conducted by designated hearing officials) are appropriate venues for transcripts, but informal workshops do not lend themselves to court reporting techniques. Instead, they suggest using comment forms at workshops or other informal hearings. *ARP's Response:* Disagree. This change is not needed. Paragraph 406.d of the final order requires hearing transcripts to ensure decision makers have information about major concerns and issues raised during public hearings.

*Chapter 4 comments. General comment:* A commenter suggested placing all tables at the end of the chapter for easier reference and to aid in reading the text. *ARP's Response:* Agree. Tables 6–1 through 6–3 of the final Order (formerly Tables 1 through 3 in Chapter 4 of the draft Order) are now at the end of Chapter 6 in the final Order.

Chapter 6 provides information about CATEXs.

Another commenter had many comments on the assumptions FAA makes on assessing noise impacts and the applicability of the assumptions to categorical exclusions. *ARP's Response:* Please refer to this Preamble's Significant noise impact threshold section for ARP's response to the commenter's concerns.

Regarding the footnote on page 1 of the draft Order's Chapter 4, a few commenters noted the list of laws was incomplete. For example, it failed to include wetlands and the Clean Air and Clean Water Acts. *ARP's Response:* Agree. To correct this error, paragraph 9.t and Table 1-1, list the laws, regulations, and orders comprising the term, "special purpose laws" for purposes of this Order. The table includes information from Order 1050.1E, Appendix A, which discusses requirements outside NEPA.

Regarding footnote 2, a commenter wanted clarification of the Emissions Dispersion Modeling System (EDMS) model version one should use when conducting air quality analysis. The commenter also states it is concerned about EDMS's capability because EDMS doesn't provide for a particulate matter analysis and some default values are outdated. The commenter also asks for information about evaluating toxins \* \* \* should one use State or Federal standards? The commenter also requests a discussion on air quality conformity. *ARP's Response:* In response to the comment on the EDMS version needed to conduct air quality analysis, Order users must use the most recent version of that model (see Order 1050.1E, Appendix A, paragraph 2.4d).

In response to the comment about EDMS's ability to predict particulate matter (PM), FAA recently developed the First Order Approximation (FOA) method to enable the EDMS users to estimate PM<sub>10</sub> and PM<sub>2.5</sub> emissions for commercial, jet-turbine aircraft engines. The FOA only applies to aircraft engines having reported Smoke Numbers (SNs) and modal fuel flows for take-off, climb out, taxi/idle and approach. In cases where EDMS does not include aircraft PM emission estimates, analysts are to use the best available information. An example of this information is average the aircraft engine PM data from AP-42, Volume II, Mobile Sources, 4th edition, September 1985. Those interested in the FOA may learn more about it at: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/aep/models/edms\\_model/](http://www.faa.gov/about/office_org/headquarters_offices/aep/models/edms_model/).

In addressing the issue of air toxins, ARP refers the reader to the discussion

of aviation-related pollutants and health risks in FAA's **Federal Register** Notice of Adoption and Availability of Order 1050.1E (69 FR 33784, June 16, 2004). As to whether to use Federal or state standards for air toxins, the U.S. EPA has not established standards for hazardous air pollutants (HAPS). FAA policy is to disclose estimates of HAPS emissions for NEPA purposes, but not to assess human health risks due to the absence of Federal standards and acceptable data linking air toxins to human health (see this Preamble's Instructions on "NEPA-like" states or agencies for more information). FHWA recently issued an interim policy on mobile source air toxins on February 3, 2006, at <http://www.fhwa.dot.gov/environment/airtoxic>.

Turning to conformity instructions, ARP disagrees with the commenter's request to include instructions on conducting a conformity analysis. The Clean Air Act, not NEPA governs conformity requirements. The Desk Reference will address this topic. Until ARP completes the Desk Reference, users of Order 5050.4B should follow instructions on general conformity in the Air Quality section of Order 1050.1E's Appendix A.

Regarding draft Order Chapter 4's Tables 1 and 2, a commenter stated the Tables did not include certain actions that are categorically excluded. As a result, ARP could not CATEX certain actions if they did not appear in these Tables. *ARP's Response:* Agree in part. ARP admits that it unintentionally omitted certain airport projects and associated actions from the draft Order. To correct this, ARP has revised the Tables (now, Tables 6-1 and 6-2). Regarding the balance of the comment, ARP disagrees with that commenter's statement. ARP wishes to note that its personnel may categorically exclude an action even if it is not listed in Tables 6-1 and 6-2 of the final Order, provided the action is listed in Order 1050.1E, paragraphs 307-312. This is because those paragraphs list the categorical exclusions that all FAA organizations must use. ARP could have relied solely on those paragraphs for airport actions that may be categorically excluded. But for convenience and to avoid reading the extensive text in those paragraphs not pertaining to airport actions, ARP alphabetically arranged airport-specific portions of the agency's categorical exclusions in Tables 6-1 and 6-2 of Order 5050.4B. ARP has assembled and provided the CATEXs in these tables for ease of reference. Nevertheless, there may be actions that ARP may approve, but that the Tables inadvertently omitted. If there is any inconsistency,

Order 1050.1E supersedes the Tables in Order 5050.4B.

Starting paragraph 403 comments, a reviewer states that CATEXs do not contain public disclosure requirements, a critical part of the NEPA process. In addition, the commenter objects to the instruction that ARP need not notify local officials that ARP is considering a CATEX. Further, no written report explaining assumptions on a CATEX is required. Finally, there is no way to legally appeal or challenge FAA's CATEX determination. *ARP's Response:* Disagree. ARP follows the agency-wide instructions in Order 1050.1E, Chapter 3 addressing CATEXs. In developing the instructions in Order 1050.1E at Chapter 3, FAA, in consultation with CEQ, determined there is no need to involve the public when impacts are so minimal that they don't trigger extraordinary circumstances. After public vetting of draft Order 1050.1E, CEQ certified and FAA adopted the instructions in that Order. For NEPA purposes, the Order does not include public disclosure requirements for CATEXs because these actions are to be so minor in impact that they rarely cause significant environmental impacts (40 CFR 1508.4). Therefore, FAA decided public notices of those actions are not needed. However, FAA believes the need to examine extraordinary circumstances provides an adequate level of public involvement for categorically excluded actions deserving public input. ARP emphasizes that if a potential CATEX involves an extraordinary circumstance associated with a special purpose law, the responsible FAA official must ensure FAA complies with the requirements of that law or Executive Order. Some special purpose laws require public involvement. Consequently, the responsible FAA official cannot CATEX an action without ensuring compliance with the applicable special purpose law's public involvement requirements. ARP wishes to point out, that anyone who believes ARP did not meet the requirements of the applicable special purpose law, may legally challenge the FAA's CATEX determination. Anyone believing that ARP did not fulfill the requirements of the applicable special purpose law may challenge in court FAA's decisions based on the CATEX. ARP notes this provision addresses the commenter's concerns there is no way to "legally appeal or challenge FAA's categorical exclusion determination."

Regarding alerting local officials, ARP has adopted a requirement that its responsible FAA officials inform the airport sponsor that ARP has or has not categorically excluded an action. No



CEQ regulation or agency instruction requires this, but ARP requires it to avoid past misunderstandings claiming ARP did not environmentally analyze CATEXs.

Concerning paragraph 403.f, one commenter stated the annotations in Tables 1 and 2 are too narrow and should be expanded to include other types of airport actions and ALP amendments. For example, Table 2 only allows ALP amendments for FAA-approved noise compatibility program measures. *ARP's Response:* Agree. We have revised the lead-in language for each type of Federal action Tables 6-1 and 6-2. The language may be to: Approve AIP funding; to approve an ALP; or to approval AIP funding and an ALP.

Addressing paragraph 403.f(2), a commenter suggested revising the text. The revision would allow the sponsor to provide available information to FAA so the responsible FAA official could analyze effects. If that information isn't sufficient, the official may request an EA or begin an EIS. *ARP's Response:* Agree. Paragraph 603 of the revised Order addresses this concept. It encourages an airport sponsor to provide information it has collected to the responsible FAA official to aid the official determine if a CATEX is appropriate.

Concerning paragraph 403.g(1)(a), a few commenters stated that requiring documentation to meet applicable legal requirements unnecessarily burdens sponsors to prepare evaluations for actions normally categorically excluded. The commenter suggests using telephone memos, e-mails or other communications to verify the requirements of special purpose laws have been met. Another commenter objected to the text that appeared to give other agencies veto power over FAA determinations on categorical exclusions. *ARP's Response:* Agree in part. If the applicable special purpose law does not require specific documentation, ARP agrees the sponsor may use emails, memoranda, faxes, or other correspondence to show it has contacted the appropriate agency. However, revised instructions at paragraph 605.b address documentation needs. Paragraph 606.b(3) of the final Order clearly states case files must contain the documentation an applicable special purpose law requires. This information is extremely useful to the responsible FAA official's decision to CATEX an action or require the airport sponsor (or its consultant) to prepare an EA or for FAA to prepare an EIS. Addressing the text regarding veto over FAA decisions, paragraph 606.b(4)

clearly indicates the approving FAA official determines the proper NEPA process an action would require.

*Beginning comments on Table 1 of the draft Order.* In a comment that generally addresses Tables 1 and 2 of the draft Order, a reviewer states actions involving extraordinary circumstances require the sponsor to provide more documentation for a CATEX. For actions not involving these circumstances, the reviewer seeks instruction on how to document that situation. The reviewer suggests the sponsor prepare a short letter to FAA stating that fact. *ARP's Response:* See response to paragraph 403.g(1)(a).

Addressing paragraph 404, (the responsible FAA official notifies airport sponsors about CATEXs), another commenter stated this appears to be optional. Another commenter noted that sponsors are alerted when a categorically excluded action involves extraordinary circumstances, but sponsors are not notified when actions do not involve those circumstances. Another reviewer suggested that ARP adopt one form of notice. Finally, another commenter sought notice to local municipalities. *ARP's Response:* Paragraph 608 of the final Order makes the notification to airport sponsors mandatory. ARP declines the request to notify a local municipality regarding CATEX decisions, unless the municipality is the airport sponsor. To avoid past confusion some sponsors had about ARP's CATEX reviews, ARP voluntarily adopted the notification measure. Regarding the form of notice, paragraph 608 of the final Order requires an e-mail or dated letter. ARP is using either format to ensure this notification does not place an undue burden on regional or district Airports office personnel.

Regarding Paragraph 405, a few commenters objected to the need for an EA if an action required moving people and/or businesses for any action. A commenter questioned the need for an EA if an action caused one resident to move. Another commenter stated that citing CEQ's regulation addressing preparation of an EA when an ARP official decides one is needed for agency planning or decision making would be confusing, especially for CATEXs sponsors view as not ripe for decision. Another commenter suggested deleting the phrase, \* \* \* "or its consultant" from the instruction that stated FAA must ensure the airport sponsor or its consultant prepare an EA. The commenter stated that FAA cannot require the sponsor's consultant to prepare an EA and that the sponsor has

discretion to decide if it or its consultant will prepare the document.

Another commenter recommended specifying the need for an EA if an action were near a historic site or national park. Lastly, a commenter suggested that this chapter include an "Environmental Checklist" such as the one in Order 1050.1E, Appendix 1, "page 5.J." Using this aid should expedite the environmental review process. *ARP's Response:* Regarding the comment about the need for an EA due to relocating businesses or residents, text in paragraph 702.c of the final Order clarifies that if moving businesses or people are highly controversial actions, an EA is normally needed.

Addressing the comment on EA preparation for planning or decision making purposes, ARP has modified the instruction. As lead Federal agency, a regional or district Airports office may need to prepare an EA to make a decision on planning issues or for other actions needing an FAA decision. According to 40 CFR 1501.3(b), the offices may prepare an EA for agency decision making. Paragraph 701 reflects this response.

Addressing the use of consultants to prepare EAs, ARP believes the word, "its" caused confusion. In the draft, "its" referred to the sponsor, not FAA. To clarify the sponsor's right to prepare an EA or to hire a qualified consultant to do so, the text in paragraph 702 of the final Order states the sponsor or its qualified consultant prepares an EA.

ARP disagrees there is a need to specify the distance between an airport action and a historic resource or national park. If the action is normally a CATEX, ARP's analyses of extraordinary circumstances will determine the need for an EA or EIS to better decide the intensity of the action's effects on those resources. If the action is not normally a CATEX, the responsible FAA official would request that a sponsor prepare an EA, regardless of the project's distance from these resource. ARP has not revised the text to include the commenter's suggestion.

Finally, addressing the use of an "Environmental Checklist," we were unable to find the page in Order 1050.1E, the commenter noted. ARP is discouraging encyclopedic EAs that do not focus on the specific environmental resources an action would affect and their resultant environmental consequences. Historically, EAs have contained much more information than ARP needs to make a finding on impact severity. ARP is encouraging its staff and others to be concise, yet accurate and complete when preparing EAs. This should expedite the NEPA process

without compromising document quality.

Addressing paragraph 405.d, a commenter suggested that the Order use the DNL 65 dB contour to more accurately define when new heliport operations cause noise over noise sensitive areas. *ARP's Response:* Agree in part. Paragraph 702.b of the final Order specifies the DNL 65-dB contour and the need to examine if the action may cause a DNL 1.5 dB noise increase over noise sensitive areas within the DNL 65 dB contour. The paragraph also notes in accordance with paragraph 9.n of the final Order that there are quiet settings where the DNL 65-dB standard may not apply. ARP made this change to reflect the definition of noise sensitive areas in Order 1050.1E, paragraph 11.b(8).

Addressing paragraphs 405.d and 405.f, a commenter asked clarification on the relationship between these paragraphs. Paragraph 405.d requires an EA for a new airport serving general aviation, while paragraph 405.f requires an EA for a new airport that is not located in a Metropolitan Statistical Area (MSA). *ARP's Response:* Disagree. Paragraph 702.d of the final Order clearly requires an EA for a new airport serving only general aviation, regardless of its location. Paragraph 702.e of the final Order requires an EA for a proposed new airport serving commercial service aircraft or commercial service and general aviation aircraft, provided that facility would not be located in an MSA. Airports serving commercial service aircraft that are proposed in an MSA require an EIS (paragraph 903.b).

Regarding paragraph 405.i, a commenter recommended adding a provision allowing ARP to adopt an EA if the Corps has accepted that document for a permit it has issued for the proposed action. Another commenter from Alaska wants ARP to issue an exemption regarding the need to prepare EAs for airport actions affecting wetlands in that state. The commenter notes that wetland involvement is a "kick out" to categorically excluding an action. Therefore, EAs will be the norm in Alaska for projects affecting wetlands due to Alaska's abundance of wetlands. *ARP's Response:* Regarding the first comment, ARP agrees, with the suggestion. Paragraph 707.b of the final Order provides information from Order 1050.1E, paragraph 404d, describing the responsible FAA official's duties when ARP will adopt another Federal agency's EA.

ARP disagrees with the comment from Alaska stating an EA is needed for all airport actions affecting wetlands. ARP

cannot issue an exemption for the State of Alaska, nor other locales. If the commenter seeks that exemption, it should contact the Office of Environment and Energy, since that office is responsible for changes to agency-wide procedures. However, readers should note that Chapters 6 and 7 of the final Order clarify when EAs are needed for airport actions in compliance with Order 1050.1E. In preparing Orders 1050.1E and 5050.4B, FAA and ARP, respectively, streamlined the NEPA process for actions involving wetlands as much as possible. ARP informs the commenter that development of the CATEX for Order 1050.1E, paragraph 310k, addressed "actions having minor impacts on U.S. waters and wetlands." This, indeed, was a streamlining measure FAA implemented in preparing Order 1050.1E, and ARP includes it in Order 5050.4B. FAA includes this instruction in these Orders to reduce the number of EAs prepared for actions that affect wetlands. Earlier instructions required EAs for all FAA actions affecting any amount of U.S. waters or wetlands. ARP contends this procedures in Orders 1050.1E and 5050.4B regarding wetlands are the most efficient and effective ways to address this issue. When an EA is needed, ARP reminds airport sponsors to work with the responsible FAA official early in the EA preparation process. This should focus the EA on information the FAA official needs to determine if the EA adequately addresses practicable alternatives, wetland impacts and their consequences, impact severity, and mitigation. This information is needed to meet FAA and other Federal requirements. Working early with the official should also reduce the EA's bulk. Too often, EAs include unnecessary and lengthy discussions about resources the action would not affect. Better vigilance and quality control to focus the EA on expected impacts and consequences should expedite the NEPA process for airport actions without compromising document quality.

Concerning paragraph 406.b, a commenter applauded the inclusion of language stating that FAA need not prepare an EIS if a sponsor's EA shows the action would not have significant environmental effects. *ARP's Response:* Comment noted. Paragraph 903.c of the final Order contains that text.

Concerning paragraph 407, which discussed cumulative effects, some commenters disliked the instructions the paragraph provided. They suggested that ARP provide much more information on this topic. *ARP's Response:* Paragraph 1007.i provides

information on cumulative effects. ARP will provide more details in its Desk Reference. Until ARP that document is available, ARP urges readers to review paragraph 1007.i of this Order, paragraph 500c of Order 1050.1E, and CEQ's guidance on cumulative impact analysis, Considering Cumulative Effects Under the National Environmental Policy Act (<http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>).

Addressing paragraph 408.a, a commenter objected to the statement, "airport actions often disturb substantially more area than other FAA activities." The commenter noted that actions the Air Traffic Organization oversees often affect greater areas than do airport actions. *ARP's Response:* Agree. ARP has deleted the statement from the Order. However, ARP notes that noise impacts due to air traffic actions may affect greater areas than airport projects. However, item n of this Preamble's Final FAA Order 5050.4B section notes that the extent of physical disturbances due to airport actions is often greater than the physical disturbances other FAA actions cause.

Concerning paragraph 408.b(1), commenters argue the analysis needed to determine if an action would exceed a national ambient air quality standard requires costly, time-consuming dispersion analysis. This analysis creates an undue burden on airport sponsor. Instead, the commenter suggests using conformity applicability analysis for projects in non-attainment areas. *ARP's Response:* ARP disagrees with the commenter's request to replace the impact severity criteria of NAAQS violations with exceedances of *de minimis* levels for Clean Air Act general conformity in non-attainment areas. NEPA requires some type of air quality evaluation for most actions having potentially significant air quality effects. ARP notes that NEPA does not limit that analysis to non-attainment or maintenance areas as General Conformity does. FAA's upcoming "presumed to conform" list will provide further information on actions that have no potential to significantly affect air quality. The screening criteria in the FAA/Air Force Air Quality Handbook may also be considered in evaluating potential air quality impacts. It is not ARP's intent to require a dispersion analysis in every case.

Concerning paragraph 402.b.(2), a few commenters stated the terms, "sizeable amount" and "small tract of sensitive habitat" provided little, if any guidance and complicate the analysis. Consider deleting this section and use the simple reference in Order 1050.1E, Appendix

A. *ARP's Response*: Table 7-1 incorporates this and other thresholds from Order 1050.1E, Appendix A. ARP recognizes and agrees with the commenters' statements that Order 5050.4B should include useful information from Order 5050.4A. Table 7-1 incorporates some of the information from Order 5050.4A, paragraphs 47.e and 85. a-t in the Table's "Factors to Consider" column. Although Order 1050.1E does not include this information, ARP included it in Table 7-1 because ARP specialists, airport sponsors, and consultants have, for years, found the information useful in assessing airport actions. Readers should note the "factors" are not significance thresholds, but simply summarize past guidance that remains useful in determining if an action "triggers" a significant impact threshold in Order 1050.1E.

*Chapter 5 Comments*: ARP received no general comments on this chapter. Addressing comments on paragraph 500, a commenter suggested the text note that an EA or EIS is not needed if FAA CATEXs an action. *ARP's Response*: Agreed. ARP made a revision to paragraph 601.c of the final Order clarifying that item.

Addressing paragraph 500.d, another commenter sought clarification about ARP's role in preparing or reviewing environmental documents that State Block Grant Program (SBGP) participants prepare. The commenter sought information on ARP oversight of the SBGP. *ARP's Response*: Agree. Paragraph 213 of the final Order states ARP remains responsible for overseeing a participating state's activities under the SBGP, not reviewing every environmental document for adequacy. This oversight is to ensure the SBGP participant is complying with its SBGP contractual agreements.

Regarding a comment on paragraph 502, a commenter seeks provisions for ARP funding to communities that SBGP actions would affect. Particularly, the commenter wants funding to study airport-related noise, water, and air pollution impacts. A commenter from a participating SBGP entity, another commenter, and the U.S. EPA seek information on how Section 106 of the National Historic Preservation Act, Section 4(f), and other special purpose laws relate to the SBGP. The commenters question who is responsible for meeting NEPA and the special purpose law requirements outside NEPA. *ARP's Response*: In addressing the comment on funding for surrounding communities, ARP disagrees. This funding is not eligible under the Airport Improvement Program

or the SBGP. Like all other airport actions, communities must fund their own studies. In response to the questions on SBGP responsibilities, ARP notes that its issuance of SBGP money is a CATEX (Order 1050.1E, paragraph 307.o). After issuing that money to SBGP participants, ARP has no discretion over the money. Therefore, financing of airport actions under the SBGP is not a Federal action and NEPA does not apply. However, ARP notes the participating SBGP states signed a contractual agreement that makes them responsible for completing an environmental evaluation of the airport action that will receive SBGP funding (paragraph 211 of the final Order).<sup>9</sup> According to that contract, the evaluation must be similar to the interdisciplinary analysis ARP would have done if it had responsibility for the action (recall that the SBGP participant has discretion over the action) States with "NEPA-like laws" comply with those laws when completing the environmental impact analysis SBGP actions would cause. They must also follow instructions in this Order and 1050.1E, Appendix A (and eventually the Desk Reference) to address the special purpose laws outside NEPA (paragraph 212.b of the final Order). States without "NEPA-like laws must follow the NEPA implementing instructions in this Order and Appendix A (and eventually the Desk Reference) as noted previously (paragraph 212.c of the final Order). ARP requires this process not to comply with Federal regulations, but to provide SBGP personnel with information they contractually agreed to use to evaluate environmental effects of SBGP actions in a comprehensive, interdisciplinary manner.

Concerning paragraph 502.e(1), another commenter sought clearer instructions on ARP's role when it awards discretionary funding for an airport action under the SBGP. *ARP's Response*: Comment noted. Paragraph 213.a of the final Order addresses this situation. In this case, ARP, not the participating state, is responsible for completing the NEPA process. This is because ARP uses its discretion when reviewing requests for discretionary

<sup>9</sup>CEQ has stated that the Order's instructions on the SBGP: " \* \* \* comport [agree] with NEPA. In fact, FAA deserves credit for not simply categorically excluding the program [SBGP], as it can based on the limited authority over the distribution of funds by statutory apportionment (49 U.S.C 47114(d)), but furthering NEPA purposes through contractual commitments to meet NEPA requirements." Comments on Order 5050.4B Preamble, personnel communication from Edward A. Boling, Council on Environmental Quality to Edward Melisky, FAA, dated April 9, 2006.

money for a specific SBGP action at a particular airport. Since ARP exercises discretion over a portion of the funds for the action, it must meet NEPA requirements.

Concerning paragraph 504, a commenter questioned the awareness of other FAA organization responsibilities for actions connected to SBGP airport actions. A commenter from an SBGP state notes the Order references the need for an airport sponsor to provide information to and consult with FAA for airport projects, but it doesn't discuss these issues relative to the SBGP. The commenter notes the Order should more clearly address how the sponsor should relate to SBGP agencies. The same commenter also wishes to know if SBGP participants will have access to the Desk Reference. *ARP's Response*: ARP discusses the concerns of the commenter in item k of this Preamble and in comments addressing paragraphs 203.a and 307.f of the draft Order. Readers should review those responses for information on the FAA organization's duties and SBGP projects. Additionally, ARP wants readers to know that it has coordinated the requirements of paragraph 213 (addressing FAA Actions connected to SBGP projects) with other FAA organizations who retain authority for actions connected to SBGP projects. Those organizations are aware of their continued involvement in these projects.

In addressing the comment about airport sponsor coordination for SBGP actions, paragraph 212.a of the final Order addresses this. It clearly states that participating SBGP State agencies should substitute the words, "SBGP agency personnel" when reviewing instructions their Federal counterparts would normally meet. This wording informs the reader that the State, not FAA, is taking an action or making a finding or decision regarding a particular airport action under the SBGP.

Regarding Desk Reference availability, ARP directs the commenter to the General Comments section of this Preamble discussing the Desk Reference.

Responding to a comment about paragraph 505, a reviewer objects to ALP approvals occurring without formally involving communities adjoining an airport. Three other commenters seek added text to show that ARP may conditionally and unconditionally approve an ALP. *ARP's Response*: ARP notes the comment addressing public involvement. ARP informs the commenter that NEPA and many of the special purpose laws applicable to airport projects require

public involvement. ARP cannot unconditionally approve an ALP or other Federal actions without meeting the requirements of these laws, including their public involvement provisions. Addressing the comments about issuing both types of approvals for an ALP, ARP agrees. To more clearly emphasize this, ARP has discussed those approvals in paragraph 202.c of the final Order. The paragraph notes the approving FAA official may not conditionally approve an ALP depicting a new airport, a new runway, or a major runway extension, when an EA or EIS is being prepared for any of these facilities and actions connected to them. Instead, the approving FAA official may unconditionally approve an ALP depicting those facilities and their connected actions only if FAA has issued a FONSI or ROD that is based on an EA or EIS, respectively, that addresses those airport actions.

Concerning paragraph 505.b(2), two commenters suggest noting that conditional ALP approvals apply to actions FAA deems "not ripe" for a decision (*i.e.*, tiering). *ARP's Response:* Agree. Paragraph 202.c of the final Order discusses how conditional, unconditional, and "mixed" approvals relate to tiering.

Regarding paragraph 505.b(3), a commenter objects to the limit on conditional airport layout plan (ALP) approvals. The commenter objects because ALPs often include actions, "that do not require any type of federal approval." The limits proposed could jeopardize and delay projects not requiring that approval. Another commenter states this paragraph discourages sponsors from beginning the NEPA process early in project planning. A third commenter suggested adding the words, "and not shown on an unconditionally approved ALP" after the phrase, "[t]he approving FAA official may not issue a conditional approval to a sponsor who has begun preparing an EA or if FAA has begun preparing an EIS addressing [an] action depicted on proposed ALPs." The same commenter also suggested adding text discussing ALP features that provide safe, efficient airport operations or airport use. *ARP's Response:* Agree in part. ARP has revised the wording in paragraph 202.c.(3)(a) of the Order to more clearly describe the limits on ALP approvals. The new text limits this provision to three types of projects: a new airport in a Metropolitan Standard Area, a new runway, and a major runway extension and any of their connected actions (paragraph 202.c(4)). FAA officials may not conditionally approve any ALP for any of those

projects when the projects are subjects of EAs or EISs being prepared and the approving FAA officials have not yet issued a Finding of No Significant Impact (FONSI) or Record of Decision (ROD), respectively. This new text better reflects the instructions ARP issued to its staff in November 2003. ARP issued that guidance to address concerns that it was approving certain major Federal actions before it completed the NEPA process. ARP decided that guidance was needed to counter arguments that it was prejudging certain actions before it completed the NEPA process.

ARP declines to add the suggested wording addressing unconditional ALP approvals. ARP sees no value in doing so since an airport sponsor could not construct the project if it were not on an unconditionally approved ALP. To unconditionally approve an ALP, ARP must have completed the NEPA process for that project (paragraph 202.c(2)(b) of the final Order). However, it accepts the suggested text discussing ALP features that provide safe, efficient airport operations or airport use. That language is useful to airport sponsors because it helps them develop plans in a timely manner.

Regarding the comment on changing ALPs without FAA approval, ARP is unsure of the types of actions the commenter mentions. ARP reminds airport sponsors that changes to an ALP that would involve a Federal action (as defined in paragraph 9.g of the final Order) require FAA to complete the NEPA process for those actions. Upon completing that process, the approving FAA official may unconditionally approve the ALP depicting the actions. After FAA issues that approval, the sponsor may begin the projects depicted on that ALP.

Finally, addressing the comment that this ALP approval limit would discourage sponsor start-up of the NEPA process early in project planning, ARP understands the commenter's concern. To clarify this point, ARP urges readers to review Chapter 5 in Advisory Circular 150/5070-6, Airport Master Plans. That information discusses considering environmental issues during project planning before the NEPA process begins. ARP prepared this guidance to address the commenter's concern among other reasons. Chapter 5 of the final Order also discusses airport planning and the NEPA process.

Regarding paragraph 505.d, a commenter noted the purpose of the paragraph was unclear and did not relate to the rest of the text following it. The information on cumulative impacts was not considered useful. The

commenter also sought some information on actions having independent utility. *ARP's Response:* Agree. ARP has deleted the paragraph. Paragraph 1007.i of this Order contains information on cumulative effects. (See item x, discussions of Surface Transportation and Cumulative Impacts, and responses to comments on paragraph 407 for more information).

Addressing comments on paragraph 507.a, three commenters stated the information in this paragraph simply repeats the unclear guidance that Order 5050.4A, paragraph 33 provided. As a result the final Order will continue the uncertainties that exist in Order 5050.4A. Two commenters requested clearer information on situations: (1) Where a sponsor does not use AIP or Passenger Facility Charge (PFC) charges to buy land and that does not change the use of the purchased tracts; (2) on land purchases done for land-banking purposes, even if the lands do not border an airport; and (3) to buy land that special purpose agencies or courts require for mitigation or remediation. Another commenter seeks information to address an airport sponsor's purchase of land for future airport development while using money from an unknown source or while using AIP funding to do so. *ARP's Response:* ARP notes the comment on Order 5050.4A. Regarding the actions noted above, ARP has addressed circumstances similar to the three of the four noted above in paragraph 204 of the final Order. The Order does not address the item on buying land other agencies or the court requires for mitigation or remediation.

Regarding purchases of land for reasons other than mitigation or remediation, paragraph 204.a of the Order references 40 CFR 1506.1. That regulation notes that, until a Federal agency issues its Record of Decision, neither the agency (40 CFR 1506.1(a)) or the applicant (40 CFR 1506.1(b)) may take action concerning any proposal that would adversely affect environmental resources or limit the agency's choice of reasonable alternatives. Paragraph 204.b of the Order discusses ARP responsibilities when it learns about a sponsor who is about to buy land before ARP completes the NEPA process. The approving FAA official will tell the sponsor that the sponsor's action could prejudice or preclude favorable ARP decisions addressing uses of the land. The official will also tell the sponsor that ARP will take appropriate actions to comply with NEPA and any other applicable Federal laws. Before FAA approves future actions involving the property, ARP will consider the manner in which the property was acquired,

paying particular attention to DOT Section 4(f) responsibilities and other special purpose laws applicable to the situation. The official will also carefully consider if the land acquisition would have adverse environmental effects or limit the choice of reasonable alternatives, based on the manner in which the sponsor obtained the property before ARP issued a decision for future FAA actions involving the property (paragraph 204.b(2)(a)). Finally, paragraph 204.c requires the sponsor to show to the approving FAA official that the purchase was consistent with this Order, and that the purchase did not prejudice ARP's objective analysis of alternatives or limited implementation of the preferred alternative.

Turning to the situation on buying land that other agencies or the courts require, the Order does not address this situation because ARP does not see that it has an action in these cases, unless the land borders an existing airport. In that case, as in the above situations, ARP would need to unconditionally approve the airport layout plan (ALP) under 49 U.S.C. 47107, if the airport would include the purchased land, even if the sponsor acquires the land with its own money. That approval is needed to show the land has been added to the airport. Paragraph 204 would also apply in this case. If no change to an ALP is needed or no Airport Improvement Program or Passenger Facility Charge funding is involved, the sponsor would buy the land to meet requirements of another Federal agency or the courts. Therefore, those purchases would occur outside FAA's purview.

Addressing comments on paragraph 507.b, a commenter seeks information on specific situations that would preclude ARP from reimbursing a sponsor. The commenter also seeks guidance on how ARP would determine if the purchase met the requirements of this Order and the NEPA process. The commenter also seeks information on the need for an Environmental Due Diligence Audit (EDDA). *ARP's Response:* Please see the response for paragraph 507.a, particularly the information regarding paragraphs 204.b and 204.c of the Order. ARP would reimburse a sponsor only if ARP could meet the requirements noted in those paragraphs. Turning to the comment on the need for an EDDA, ARP notes that the need for an EDDA depends on the land's present or prior uses. Actions involving lands having or that had commercial or industrial uses are good candidates for EDDAs. FAA's Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real

Property Transactions, addresses the need for EDDAs when FAA will purchase land. Information in that Order is also useful to airport sponsors.

Concerning paragraph 507.b(1)(c), a commenter states the paragraph mistakenly describes and greatly expands the scope of Section 4(f). Countryside beauty is not mandated in Section 4(f). *ARP's Response:* Disagree. In highlighting the countryside, ARP was conveying Congressional policy regarding the resources Section 4(f) protects. 49 U.S.C. 303(a) clearly states: "It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreational lands, wildlife and waterfowl refuges, and historic sites." By including that statement, ARP emphasized the philosophical as well as procedural requirements of 49 U.S.C. 303.

Concerning paragraph 512, an SBGP participating state sought information on how an SBGP participant is to consult with Federally-recognized Tribes. *ARP's Response:* Paragraph 212.e of the final Order clarifies SBGP and Tribal consultation. The paragraph states if an FAA organization is involved in an action connected to an SBGP airport action, the responsible FAA organization will conduct the Tribal consultation. Regional and district ARP personnel are available to assist the FAA organization if requested. If there is no FAA involvement, the SBGP agency should follow instructions in paragraph 303 of the Order. That paragraph notes that regional and district ARP personnel are available to assist the SBGP agency if requested. That paragraph and other paragraphs in Chapter 3 (Agency and Tribal Coordination) of the final Order discuss how FAA personnel (and SBGP personnel when appropriate) are to conduct Tribal consultation according to FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation and Policy and Procedures. Paragraph 212.e notes that Order 1210.20 applies solely to FAA personnel, but urges SBGP agencies to use those instructions as a guide for conducting respectful, meaningful Tribal consultation when there are no FAA actions connected to an SBGP airport action.

Regarding paragraph 513, a commenter noted that extraordinary circumstances did not include consideration of Federally-listed endangered or threatened species. Therefore, the commenter noted that ARP's review of a wildlife hazard management plan (WHMP) might accidentally omit the need to comply

with the Endangered Species Act (ESA). The commenter also urged ARP to include flexibility in its NEPA procedures to allow it to CATEX WHMP approvals if Section 7 consultation under the ESA shows the WHMP would not affect or not jeopardize a Federally-listed endangered or threatened species. *ARP's Response:* The commenter is incorrect in stating that extraordinary circumstances do not include consideration of Federally-listed endangered or threatened species. In any event, paragraph 209.a clarifies that a grant to fund the development of wildlife hazard management plans (WHMPs) or the approval of those plans is categorically excluded under Order 1050.1E paragraphs 308e. Paragraph 209.b states that airport layout plan approvals and/or approvals of grants for Federal funding to carry out FAA approved WHMPs include items: (1) That may be categorically excluded; or (2) that may require preparation of an environmental assessment or an environmental impact statement. When reviewing airport sponsor requests for Federal funding to implement the WHMP or changing an Airport Layout Plan to depict approved WHMP projects, FAA must consider extraordinary circumstances, such as biotic communities and endangered species.

*Chapter 6 Comments:* ARP did not receive any general comments on this chapter. Addressing paragraph 600, two commenters noted that some FAA regions have prescribed formats for CATEXs. The commenters suggested that a standardized format would allow sponsors and their consultants to more easily provide needed information and documentation. A state block grant participant asks if SBGP participants must use regional or district Airport office-issued forms. Another commenter states, "\* \* \* it is completely wrong that no prescribed documentation or memorandum is required to support a categorical exclusion." *ARP's Response:* Disagree. ARP does not require standard forms for CATEXs. Turning to the comment that prescribed documentation should be required, ARP notes that: "CEQ strongly discourages procedures that would require the preparation of paperwork to document that an activity has been categorically excluded" (CEQ Memorandum: Guidance Regarding NEPA Regulations, 48 FR 34268, July 28, 1983). However, ARP requires documentation to verify compliance with any special purpose laws outside NEPA that apply to a proposed CATEX. Order 1050.1E, paragraph 304 requires this documentation and ARP reflects

that requirement in paragraph 607 of this Order. Therefore, case files for CATEXs must contain the documentation that applicable special purpose laws require. This procedure verifies that ARP has made the appropriate CATEX determinations for NEPA purposes and complied with applicable special purpose laws.

For information purposes, readers should note that paragraph 607.c addresses optional documentation. That paragraph states that if the categorical exclusion does not require documentation to address any special purpose laws, the responsible FAA official may choose to include information in the project file for reference or legal challenges that may occur. A note to that paragraph also states that ARP leaves the decision to include contractual requirements for SBGP participants to use forms to the discretion of Airports Division managers for the respective regions having participants in the SBGP. Readers should also note that paragraph 608 requires the responsible FAA official to notify an airport sponsor by letter or dated e-mail that ARP has categorically excluded an action. ARP requires this notice, not for NEPA purposes, but to ensure airport sponsors know that FAA has or has not categorically excluded proposed airport actions. ARP institutes this requirement to avoid misunderstandings that airport sponsors have had about ARP's environmental reviews of categorically excluded actions.

Concerning paragraph 601.a, one commenter states the sponsor should send a copy of the information it filed with FAA to the community adjoining the airport. *ARP's Response.* Comment noted. NEPA does not require documenting or sharing any information to support a CATEX. If an airport sponsor wishes to distribute information it may do so, but only after conferring with the responsible FAA official. This step ensures the information a sponsor distributes accurately reflects FAA policy and concerns. This is a step for EAs and EISs and is good management policy for CATEXs. The commenter should note that if a CATEX has an extraordinary circumstance that involves a special purpose law, distribution of information is likely. This is because some of those laws require public involvement. Therefore, the sponsor or the responsible FAA official, as appropriate, must distribute or inform the public according to the regulations implementing any special purpose law applicable to the proposed action (paragraph 607.b). This approach is reasonable, since CATEXs not

involving special purpose laws or extraordinary circumstances typically have no or minimal adverse environmental effects.

Regarding paragraph 601.b, many commenters objected to the 30-day period the paragraph required. The draft Order proposed this time to enable the airport sponsor to obtain information from agencies to support a CATEX. One commenter noted 30 days may not be sufficient time for agencies to reply due to their respective workloads, while another commenter stated 15 days was sufficient time for an agency response. Two commenters noted the past practice allowing airport sponsors to provide documentation they have to support a CATEX should continue. One commenter noted that this information includes the documentation the sponsor believes it needs to meet an applicable special purpose law. Sometimes, agency consultation is not needed. Typically sponsors consult with the responsible FAA official to determine the needed documentation. *ARP's Response:* Agree in part. ARP has removed timelines for agency replies. Instead, paragraph 606.b requires the sponsor or FAA, as appropriate, to comply with the requirements of the special purpose law that applies to the proposed action. For example, if an applicable special purpose law has a 30-day review period, that is the time the responsible FAA official or sponsor must provide for the agency to reply. Paragraph 606.b(4) notes that the sponsor, if it is attempting to collect information from the agency, should immediately contact the responsible FAA official. That official should immediately contact the resource agency via telephone or e-mail to determine when the information will be arriving or to discuss alternative steps to meet the applicable law. The official should keep a record of that contact. If this step produces no information, the official should immediately contact the approving FAA official for a decision. The approving FAA official then decides if FAA should CATEX the action or require an EA or EIS. ARP believes this process will show it has made a good faith effort to comply with all applicable laws. To help ARP accomplish its duties and meet sponsor schedules, paragraph 603 urges airport sponsors or their consultants to develop realistic schedules. The schedules should consider the time needed to collect information needed to review a CATEX and any extraordinary circumstances it involves. The schedule should provide sufficient time for the responsible FAA official to review the proposed action.

The intent of this instruction is to allow ARP to meet the requirements of special purpose laws that would apply to an action without infringing on the sponsor's desired schedule. Therefore, airport sponsors should consult responsible FAA officials as needed to determine the timelines and documents the official will need to determine if ARP may categorically exclude the action. If sponsors do not provide the information noted above, the responsible FAA official will have to collect it before the approving FAA official can make a decision on the project.

Another commenter on paragraph 605.b suggested adding some other resources to the list the paragraph notes. Two commenters also note that FAA may CATEX an action even it adversely affects a property on or eligible for the National Register of Historic Places. Another commenter stated that affected resource considerations for a CATEX should include national parks. A third commenter stated the Order should not require agency consultation if it is obvious that an action would not affect a resource. Requiring agency consultation would only delay the action. *ARP's Response:* Regarding the first comment, ARP disagrees. The paragraph listed the resources for illustrative purposes only. The final Order at paragraph 9.t defines the special purpose laws, while Table 1-1 lists those special purpose laws that apply most often to airport actions.

Addressing adverse effects on historic properties and CATEXs, ARP agrees. If the responsible FAA official meets the requirements of 36 CFR part 800 *et seq.* regarding adverse effects and the official decides an EA or EIS is not needed, the approving FAA official may CATEX the action.

Regarding the need to include national parks in a CATEX analysis, ARP agrees. The analysis would consider parks and other Section 4(f)-protected resources if they occur in a project's affected area. Table 6-3 listing extraordinary circumstances includes parks and other Section 4(f)-protected resources.

Addressing the last comment regarding agency consultation, ARP agrees in part. Agency consultation is not needed if the responsible FAA official decides it is obvious no extraordinary circumstance applies to the proposed action. However, those decisions are not always "obvious." In these instances, the responsible FAA official should review any information about the action the sponsor provides information. Based on that information, the official should use his or her

discretion to decide if agency consultation is needed.

Concerning paragraph 605.b.(1)(e), a commenter states that this paragraph would require formal coastal zone consistency for each project in the coastal zone or affecting that zone. Most state agencies responsible for deciding if an action meets coastal zone standards require a formal review process, which according to the regulations could last 6 months. *ARP's Response:* Agree. To comply with Order 1050.1E, paragraph 304j (the likelihood an action is consistent with any Federal, State, or local law relating to the environmental aspects of a proposed action) would require a coastal zone consistency opinion from the appropriate State agency. However, ARP notes that state coastal zone management plans (CZMPs) list the specific Federal licensing, permitting, or approval actions to which that plans apply. ARP urges sponsors and responsible FAA officials to consult their respective CZMPs to facilitate overall airport development. As an alternative, sponsors should contact the CZMP agency early in project planning to determine if the agency lists any Federal actions in paragraph 9.g as actions the CZMP agency wants to review. Also, readers should note that if the CZMP does not list any of those actions, the State coastal zone agency must notify the sponsor and FAA that the State agency intends to review the proposed activity. That agency must make this decision within 30 days of receiving notice of the action. So, it is critical that the sponsor or its consultant contact the appropriate State agency early in project planning to ensure coastal zone requirements do not delay ARP's evaluation of the proposed action or the sponsor's intended schedule.

Discussing paragraph 603, a commenter states ARP notice to sponsors about the fate of a CATEX should be mandatory, not discretionary. *ARP's Response:* Agree. Paragraph 608 of the final Order requires the responsible FAA official to inform the airport sponsor via dated letter or e-mail. ARP includes this instruction to its personnel to ensure the airport sponsor knows that FAA has categorically excluded or has denied a CATEX for a proposed airport action. ARP makes this a formal step in its NEPA implementing instructions for CATEXs to address misunderstandings that have occurred regarding ARP environmental reviews of certain categorically excluded airport actions.

*Chapter 7 Comments:* Beginning general comments. A commenter noted the chapter does not provide

information on public reviews of draft EAs. *ARP's Response:* Agree in part. Paragraph 307.c(3) of the draft Order required a 30-day public review of a draft EA if a public hearing would occur. However, the draft did not define any review period for other situations. ARP has corrected that oversight. Paragraphs 404.a(4) and 708 of the final Order discuss public availability and review of draft EAs for public hearings.

Regarding paragraph 700, a commenter from a state participating in the SBGP requests clearer procedures for processing EAs. The commenter asks what happens if the state decides an EIS is needed, but FAA does not agree. Will FAA prepare an EIS or will it issue a FONSI? *ARP's Response:* Regarding procedures for processing EAs, ARP refers the reader to paragraph 710 of the Order. Although this and other information throughout the Order refers to ARP personnel, the commenter should note paragraph 212.d. That paragraph tells SBGP participants to alter text and instructions regarding responsible FAA official and approving FAA official responsibilities as needed.

Addressing the comment about EIS preparation, as noted earlier, financing airport actions under the SBGP is not a Federal action, so NEPA does not apply. However, ARP notes the participating state signed a contractual agreement that makes the State responsible for completing an environmental evaluation of the airport action that will receive SBGP funding (paragraph 211 of the final Order). According to that contract, the evaluation must be similar to the interdisciplinary analysis ARP would have done had it retained responsibility for the action that is now the SBGP participant's responsibility. Therefore, FAA would not have any decision on a state's decision to prepare a document similar to an EIS, unless an FAA organization has authority over an action connected to the action under the SBGP. Paragraph 214 of the final Order discusses this situation. It notes although regional and district Airports offices are not responsible for preparing the EIS-like document, they have experience that may aid the SBGP agency in its document preparation. We recommend that readers seeking more information on the SBGP portion of the comment review item j of this Preamble and the sections addressing paragraphs 203.a; 307.f; 500; 502; and 504.

Regarding paragraph 701, a commenter states the 15-page limit noted here should be a recommendation. The most important thing is that the document provide information the responsible FAA official needs to independently review the

proposed action. A few other commenters stated that although it's a good idea, a 15-page EA is unrealistic. They request a new paragraph suggesting ways to make an EA concise to help "temper" FAA requirements for more analyses and data, while another commenter suggests dropping the statement. *ARP's Response:* The Order retains CEQ's 15-page recommendation. The Order does not require that page length, but it notes the recommendation to convey information in question 36a of CEQ's Forty Most Asked Questions (46 FR 18026, March 23, 1981). ARP stresses that the page limit recommendation is for the EA itself. That page recommendation does not: Include proof of required consultation; material or data supporting the EA, or other information supporting statements the EA contains. Instead, appendices to the EA should present that information while the EA should cite the page numbers of the particular appendix supporting the conclusions the EA provides. Citing those pages in the EA facilitates reader review, while keeping the EA concise and focused on the most important information in the appendices pertaining to the potential environmental impacts. It is the information in the EA that the approving FAA official will likely use to determine the severities and contexts of environmental effects. Airport sponsors or their consultants should contact the responsible FAA Official to determine if the regional Airports office has developed EA examples. Although ARP includes this recommended page limit, the critical factor is ensuring the EA properly addresses potential impacts.

Addressing paragraph 701, a commenter seeks more information on the term, "reasonable alternative." Paragraph 706.d.(5) notes that these are alternatives that may be achieved when one considers the technical, economic, and environmental factors associated with each alternative. Paragraphs 1007.e(4)(a) and (b) of the final Order also discusses the "prudent and possible/(feasible)" aspects of these alternatives.

Concerning paragraph 701.d, a commenter seeks clearer information on conflicts by suggesting the conflict be "substantially grounded." *ARP's Response:* Section 102(E) of NEPA requires Federal agencies to study appropriate alternatives in any proposal involving unresolved conflicts concerning alternative uses of available resources. Paragraph 706.d(5)(a) of the final Order conveys this requirement and conforms 5050.4B with FAA Order 1050.1E. ARP agrees that there needs to be some evidence of various uses of an



environmental resource to show an unresolved conflict or resources. This ensures the responsible FAA official and others interested in the project do not spend time and effort resolving a conflict that has no basis.

Addressing 701.f, two commenters seek more explanation of the term, "conceptual mitigation." One commenter notes 40 CFR 1502.14(a) and 1502.16(h) suggest the need for some level of detail for mitigation. The same commenter states language in 701.f is not consistent with Order 1050.1E, paragraph 405.g. *ARP's Response:* Commenter noted. Paragraph 706.g explains this term and borrows some wording from Order 1050.1E. The paragraph describes the term as a preliminary, qualitative description of each mitigation measure's elements. The description should also allow the reader to understand the mitigation's benefits and how the mitigation would prevent or reduce expected adverse environmental effects.

Addressing paragraph 702, a state block grant participant recommends adding a note about preparing EAs. The commenter suggests the note direct Order users to realize that references to FAA in the chapter should also be construed to mean states under the SBGP. *ARP's Response:* Agree. New paragraph 211 of the final Order clarifies that for SBGP actions, the participating state agency assumes the roles a responsible FAA official or approving FAA official would normally fulfill, unless Order 5050.4B specifies differently.

Concerning paragraph 703, a commenter requests information on FAA's role in determining an adequate Purpose and Need. The commenter recommends including the requirement that the Purpose and Need meet accepted FAA airport design and planning standards. Another commenter states the responsible FAA official should seek local community input during EA preparation. *ARP Response:* Agree in part. Revised paragraph 707.a retains original text acknowledging FAA's role in reviewing the EA for adequacy under NEPA. We believe this clearly includes determining adequate purpose and believe no further guidance is needed. ARP has added to this paragraph the statement that the agency often helps the airport sponsor define Purpose and Need.

Turning to the recommendation to define purpose and need to include airport design and planning standards, ARP disagrees. Paragraph 502 of the Order states that ARP airport planners are responsible for reviewing proposed actions and reasonable alternatives for

consistency with FAA's airport planning and design standards. ARP only approves projects meeting those standards, unless planners determine modifications to those standards are necessary to meet local conditions and that the modifications provide acceptable safety levels. Therefore, the responsible FAA official is assured that the proposed action and the reasonable alternatives that would achieve the purpose and need and that are analyzed in a NEPA document meet those standards or have qualified for modifications to those standards.

Regarding public input and EA preparation, paragraphs 301 and 704 emphasize that there shall be public involvement to the extent practicable in preparation of EAs, citing 40 CFR 1501.4. In addition, special purpose laws addressed as part of an EA may require public involvement. The responsible FAA official will ensure the required public involvement occurs as he/she complies with this final Order.

Addressing paragraph 703.b.(5), a state block grant commenter is unclear on an SBGP agency certifying that an EA is a Federal document and wants to know if the agency should forward the EA to FAA for signature. *ARP's Response:* As stated earlier in the responses to SBGP issues (item j; paragraphs 203a; 307f; 500; 502; 504; and 700), the document an SBGP participant prepares is *not* a Federal document because there is no Federal action, unless an FAA organization has authority for a connected action. Then, the document would be a joint Federal-State document. Therefore, SBGP agency should revise the adequacy statement in paragraph 707.f as noted in paragraph 212.d of the final Order.

Concerning paragraph 703.c, two commenters ask when a public hearing would be needed for a CATEX. *ARP's Response:* Paragraph 606.b(1) of the final Order addresses this point. Some special purpose laws such as Section 106 of the National Historic Preservation Act, or Executive Orders on floodplains and wetlands require public review. In some situations, the responsible FAA official may decide a public hearing is the most efficient way to get public review to comply with these special purpose laws.

Regarding paragraph 704, a commenter states the information on format and content does not match the information in Order 1050.1E. The commenter believes the intent to produce 10 to 15-page EAs and the "substantially abbreviated description of the contents of an EA" will lead to improperly prepared EAs. The commenter recommends including

information similar to that in Order 5050.4A, paragraph 47. The commenter lists a number of items from that Order it believes Order 5050.4B should contain. Another commenter requests a better explanation of how the Desk Reference will link to the NEPA process and other processes such as those for general conformity and wetland permitting. A few commenters noted that the draft Order did not list Affected Environment as one of the EA sections. They asked if EAs no longer need that section. *ARP's Response:* Earlier sections of this preamble (item a, the Desk Reference, FAA Order 5050.4B; and Instructions on "NEPA-like States") discuss the Desk Reference. ARP refers the reader to those sections. Regarding the omission of the Affected Environment section, ARP notes that was an oversight. Paragraph 706.e of the Order provides information on this important EA section.

Addressing paragraph 704.a, a commenter asks if the EA cover sheet should list sub-consultants as well the prime consultant responsible for preparing the EA. *ARP's Response:* Sub-consultant names should not be on the cover sheet. A footnote to paragraph 706.a of the final Order states the List of EA Preparers should identify those people, including sub-consultants, who have prepared the EA and substantial background material used in to prepare the EA. The List will identify the person, the material he or she prepared, and his or her employer.

Concerning paragraph 704.b, a commenter noted that regulations implementing Section 106 of the National Historic Preservation Act allow agencies to withhold confidential information. The comment also notes that this paragraph states the reference material used to prepare the Purpose and Need must be available to anyone wishing to review it. *ARP's Response:* Agree. Paragraph 700.b of the final Order addresses this. It states all appendices and references must be available to anyone wishing to review them, unless another law prohibits disclosure of certain information or contains confidentiality provisions.

Regarding paragraph 704.c, a commenter states the discussion, "splits the concept of purpose and need into two, distinct aspects." This could cause preparers to discuss this issue in two different EA sections. By focusing on the purpose, the commenter states NEPA documents could appear to be pre-decisional, rather than a document that takes a hard look at the proposed action and its alternatives. Another commenter suggests wording regarding the need to compare airport sponsor

forecasts to forecasts available from other sources. The section should discuss a reasonable range of deviation to support Purpose and Need and environmental analyses. *ARP's Response:* Regarding the Purpose and Need Statement, ARP agrees. Paragraph 706.b(2) of the final Order indicates this is one statement and should be one to two paragraphs long per CEQ's May 12, 2003, memorandum on Purpose and Need statements. ARP included the information to answer many questions it has received on this NEPA term since publishing Order 5050.4A.

Addressing the comment on comparing forecasts, ARP agrees. Paragraph 706.b(3) discusses the guidance ARP's Director of Airport Planning and Programming issued on this topic on December 23, 2004. That guidance lists acceptable forecast deviations between the sponsor's forecasts and FAA's Terminal Area Forecasts (*i.e.*, 10-percent and 15-percent discrepancy limits for 5 and 10-year forecasts, respectively).

Regarding paragraph 704.e(2), a commenter suggests revising the paragraph to emphasize integrating information special purpose law requirements into the EA to avoid duplicating information in a separate section of the EA discussing those laws. *ARP's Response:* Agree. The draft discussed this, but paragraph 706.f(2) provides further information on integrating these requirements. ARP notes combining NEPA and non-NEPA requirements helps the responsible FAA official determine impact significance for NEPA purposes and streamline other environmental reviews for airport actions.

Concerning paragraph 704.e(4), a commenter requested a definition of the term, "Environmental Management System" (EMS) and a statement about how an EMS would be helpful. *ARP's Response:* Agree. Paragraph 9.e of the final Order provides the definition. An EMS is a set of processes and practices designed to provide an organization with information about environmental impacts of its operations. An EMS is a tool to monitor and report on an organization's environmental practices and tracks measures used to mitigate environmental impacts due to organizational actions. For example, an environmental management system (EMS) may provide valuable information about airport facility designs and mitigation measures that have helped prevent or minimize significant environmental impacts. An EMS is also useful in tracking the status of environmental activities and to highlight those activities that may

require change. Paragraph 706.g(4) discusses EMS use. It notes that reviewing other airport EMSs for similar actions could provide information on the effectiveness of various measures in minimizing environmental impacts due to airport construction and operation.

Concerning paragraph 705, a commenter states that public review of an EA is not mandatory, but it should be. *ARP's Response:* See the Response to the comment above regarding former paragraph 703 and public input and preparation of EAs. Various parts of the final Order discuss public involvement in EA preparation.

Addressing paragraph 705.b, a commenter requests information on NEPA compliance if a sponsor has completed a project but then decides to seek ARP funding for it. Another commenter states the approval of an ALP is normally a CATEX, so why does this discussion on EAs address that issue. *ARP's Response:* First, addressing the request for post project funding, the Order defines Federal actions to include ALP approvals. NEPA must be met before FAA issues an unconditional ALP approval. An airport sponsor operating a public-use airport under FAA's purview should not build a project unless and until FAA has unconditionally approved the ALP depicting the proposed facility (see paragraph 202.c of the final Order). In addition, this Order provides for compliance with NEPA and environmental requirements under the airport funding statute so that the agency may proceed to process a grant application. ARP reminds airport sponsors that NEPA applies to actions that would involve first time or altered ALPs, even if the actions will not receive AIP funding.

Addressing the comment about categorically excluding revised ALPs, ARP notes that approvals of some actions depicted on ALPs may be CATEXs, while others may be the subjects of EAs or EISs. It is the proposed action and the severity of its impacts that determine the NEPA process, not the review of the ALP. Certainly, actions depicted on an ALP may be categorically excluded if they are listed in Order 1050.1E, paragraph 307 thru 312 (Tables 6-1 and 6-2 of the final Order), and the responsible FAA official determines extraordinary circumstances do not warrant preparation of an EA or EIS. However, other actions that have more substantive adverse effects require more intensive NEPA processing. Paragraphs 702.a-j and 903.a and b, list actions depicted on an ALP that are normally subjects of EAs or EISs, respectively.

Regarding paragraph 706.g, two commenters state proposed conceptual mitigation must be coordinated with agencies having jurisdiction for an affected resource and those agencies must concur with the mitigation. *ARP's Response:* Agree in part. FAA as the lead Federal agency has ultimate discretion in deciding the mitigation needed for an action. To require that outside agencies must concur in the mitigation lessens FAA's authority as the agency responsible for the action. However, paragraph 706.g of the final Order notes the sponsor should work closely with the responsible FAA official and expertise or jurisdictional agencies. This allows the sponsor to use the agencies' expertise and try to ensure the mitigation meets the recommendations of the agencies. If substantial disagreement about mitigation or other issues exists between the sponsor or FAA and an expertise agency, the responsible FAA official should contact APP-400 as noted in paragraph 707.d. This will allow APP-400 to understand the issues and assist the responsible FAA official as needed to complete the EA process.

*Chapter 8 Comments:* ARP received no general comments on this chapter. Beginning paragraph 800 comments. A commenter suggests a comprehensive definition of the term, "special purpose laws" and deleting the partial list the paragraph presented. Another commenter from a state block grant agency recommends adding a note to provide state block grant participants an alternative approval process. The note should state references to FAA should refer to SBGP participants. *ARP's Response:* Concerning the comment on special purpose laws, ARP agrees. Paragraph 9.t of the final Order defines the term and provides a list of special purpose laws that apply most often to airport actions. The Desk Reference mentioned earlier in this Preamble will provide instructions on applying those laws to airport actions. Until ARP publishes it, readers should use Order 1050.1E, Appendix A for information on those laws. Paragraph 800 of the final Order no longer discusses special purpose laws.

Addressing the SBGP issue, paragraph 211 of the final Order notes that for SBGP actions, the participating state agency assumes the roles a responsible FAA official or approving FAA official would normally fulfill, unless Order 5050.4B specifies differently.

Concerning paragraph 801, a commenter states public health impacts need to be evaluated, but notes that Appendix A of Order 1050.1E contains the impact categories where this would

occur. Should ARP use this information? Also, a commenter states the paragraph should specifically require impact intensity determinations for national parks. *ARP's Response:* Addressing the comment on public health impacts, ARP generally agrees that Order 1050.1E, Appendix A, provides good information on assessing various impact categories that could affect public health. Users of this Order should use Order 1050.1E, Appendix A until ARP issues the Desk Reference. Readers should note that Appendix A of Order 1050.1E provides the information available on the seven criteria pollutants. At present, there is no reliable and scientifically-approved methodology available to conduct health risk assessments for air toxics (*i.e.*, hazardous air pollutants). In addition, EPA has not established standards or thresholds for evaluating air toxics. Regarding the comment on national parks, ARP requires the analysis to consider impacts on parks and other Section 4(f)-protected resources if they occur in a project's affected area.

Concerning paragraph 801.b, a commenter urges ARP to include the airport sponsor in discussions about mitigation because the sponsor is responsible for possible mitigation and project design. Two commenters recommend including a statement that expertise agencies should determine the adequacy of mitigation. Another commenter stated that the first two sentences of the paragraph conflict. *ARP's Response:* Disagree. Paragraph 801.c of the draft Order included the airport sponsor in discussions about mitigation. Paragraph 800.b of the final Order slightly revised the wording, but makes the sponsor a critical part of mitigation and design decisions.

Regarding expertise agency concurrence on mitigation, ARP disagrees. FAA, as the lead Federal agency for most airport actions, has ultimate discretion in deciding the mitigation the FONSI will require. To allow an outside agency to determine that mitigation lessens FAA's authority as the lead Federal agency responsible for the airport action. However, paragraph 706.g of the final Order notes the sponsor, when developing mitigation, should coordinate with FAA and expertise or jurisdictional agencies. This allows the sponsor and FAA to use the jurisdictional agency's experience and expertise when developing mitigation that a FONSI would likely contain.

Addressing the final comment, ARP disagrees. The intent of the paragraph in the draft was to alert readers that the

responsible FAA official will make an extra attempt to determine if any mitigation or project design change would reduce impacts below significant thresholds. To better clarify this point, ARP revised paragraph 800.b to note that this effort should occur before the responsible FAA official recommends preparing an EIS. The official does so in consultation with expertise agencies and the airport sponsor.

Addressing paragraph 802 comments, a commenter states public involvement should be compulsory and the process for it should be disclosed. The same commenter states the FONSI should be valid for only 3 years. *ARP's Response:* Addressing public involvement, ARP agrees in part. We have responded to this concern in responses to comments on various paragraphs (*e.g.*, 205; 303; 703). ARP stresses that 40 CFR 1501.4 requires public involvement to the extent practicable during EA preparation. In 1050.1E, paragraph 406.e(1) and paragraph 804 of this Order FAA has also adopted procedures for making FONSI's available for public review for 30 days before the agency makes its final determination on the severities of project impacts. These instructions provide multiple opportunities for mandatory and optional public involvement.

Regarding FONSI longevity, ARP agrees. ARP addresses this issue in paragraphs 1401 and 1402 of the Order, which discuss special instructions and re-evaluating and supplementing NEPA documents, respectively. Paragraph 809.c mentions when FAA may need to amend a FONSI.

Paragraph 802.i, a commenter requested an explanation of the term, "mitigated FONSI." *ARP's Response:* ARP has added a footnote to the "boilerplate statement" in paragraph 802.g of the final Order. It states a "mitigated FONSI" is one conditioned upon mitigation measures that avoid or reduce otherwise significant effects below applicable threshold levels. Paragraph 805a of this Order recommends preparation of a FONSI /Record of Decision (FONSI/ROD) to provide the approving FAA official's reasoning in support of the FONSI in these instances.

Discussing paragraph 804.a comments, one commenter suggests clarifying that the Regional Administrator would sign a FONSI when ARP and at least one other FAA organization are involved in a proposed action. Another commenter states firm guidelines are needed for reviewing findings at each reviewing level. Another commenter notes that ARP cannot require other FAA organization

to review FONSI's. Instead, ARP should provide the opportunity for that review. The same commenter notes that in a particular region, Airports Division managers have FONSI approval authority. The commenter recommends the paragraph allow re-delegation of the Regional Administrator's approval. *ARP's Response:* ARP agrees with the comment regarding clarification that the Regional Administrator signs the FONSI when the proposed actions involve more than one organization within the FAA. Paragraph 803.c of the final Order clearly states under FAA Order 1100.154A, Delegation of Authority, the Regional Administrator overseeing the FAA regional office responsible for the EA will issue the FONSI.

Regarding firm deadlines, ARP disagrees. It cannot set review schedules for other FAA organizations. ARP will discuss project importance with the reviewing organizations and urge them to review projects within 30 days of receiving the document.

Addressing the comment that this Order should re-delegate signature authority, ARP disagrees. FAA Order 1100.154A, Delegation of Authority, clearly describes the approval authority when more than one FAA organization is involved in an action. Order 5050.4B cannot modify the requirements of Order 1100.154A.

Concerning paragraph 804.b, a commenter states the Order does not require Regional Counsel review when special purpose laws beyond Section 106 and Section 4(f) are involved in an action. A state block grant participant states the Order should provide alternative review procedures or remove the internal coordination for SBCG actions. Another commenter states FAA Regional Counsel should not review actions, "where the SHPO has issued a determination of no effect, a determination of no adverse effect, or a conditional determination of no adverse effect." *ARP's Response:* Paragraph 803.a of the Order discusses the internal review process. Required legal review occurs when actions involve: (1) Opposition by a Federal, State, or local agency or a Tribe on environmental grounds or a substantial number of people affected by the project; (2) resources protected under Section 106 of the National Historic Preservation Act; or (3) a determination of use of resources protected under Section 4(f) of the Department of Transportation Act (recodified at 49 U.S.C. 303c). In addition, the responsible FAA official may use his or her discretion for actions that affect other resources when deciding if Regional Counsel review is needed (paragraph 802.a(2)).

Addressing the SBGP issue, coordination within FAA would depend on the SBGP and its connected actions as discussed in item j. of this Preamble and responses to comments on paragraph 703.b(5). If there is no FAA organization involved, the action does not require FAA Regional Counsel review as noted in Order 1050.1E paragraphs 404e and 406c. However, ARP urges SBGP participants to contact their own State attorneys for legal reviews of those SBGP actions. Addressing the last commenter's statement, ARP wishes to alert the commenter that the SHPO is not responsible for making these determinations. According to 36 CFR 800.2(a) FAA is responsible for doing so. ARP has found Regional Counsel review of these determinations is helpful. ARP chooses to retain that review.

Concerning paragraph 805, a commenter objects to providing a 30-day review for a proposed FONSI in certain situations. *ARP's Response:* Comment noted. Paragraph 804.b of the final Order reflects agency-wide requirements in Order 1050.1E paragraphs 406e.(1)(a) and (b) and 406.2(2).

Addressing paragraphs 805.c and d, a commenter objects to the 30-day period for projects that include mitigation reducing an action's potential significant impacts or if the action is highly controversial. *ARP's Response:* Agree. We have deleted the 30-day review period. Paragraph 805.c discussing FONSI/ROD availability addresses this issue.

Regarding paragraph 808, a commenter requested guidance on when approved FONSI would be available to the public. The commenter asks if FONSI/ROD availability should be similar to notice of a ROD prepared for an EIS. *ARP's Response:* Agree. Paragraph 805.c of the final Order refers the reader to paragraph 1402.b. Although information in that paragraph refers to EISs, it is appropriate for FONSI and their accompanying EAs as well. That information will help ensure approving FAA officials use the most current environmental information in their decisions.

Concerning paragraph 810, a commenter suggests adding information saying when ARP would need to revise a FONSI. *ARP's Response:* Paragraph 809 addresses that issue.

*Chapter 9 Comments:* ARP received no general comments on this chapter. Regarding paragraph 900, a commenter requests that the state agency having Department-wide responsibilities for developing airport projects be able to

prepare an EIS under FAA's direction. Another commenter suggests adding a sentence noting the importance of setting realistic milestones for completing EIS tasks, with milestones based on project complexity. *ARP's Response:* Addressing the first comment, ARP agrees. When a state or agency subject to NEPA-like laws is involved, it would prepare the equivalent of an EIS. In those instances, the State or agency will have expertise in complying with applicable mini-NEPA laws. In other instances where an EIS is called for, although ARP isn't responsible for preparing the document addressing the SBGP action, regional or district Airports office personnel are ready to answer questions and provide guidance to the SBGP agency. If there is a connected action remaining under the purview of an FAA organization, FAA would be a joint-lead agency, helping the SBGP prepare the EIS. Paragraph 214 of the final Order has been revised to include this new information.

Regarding the discussion of realistic milestones, ARP agrees. Paragraph 902.c discusses factors critical to establishing realistic schedules to complete EISs.

Addressing paragraph 901 comments, a commenter noted an EIS should address environmental impacts and should not be expanded by discussing other public concerns outside of environmental effects. *ARP's Response:* Agree. The intent of the paragraph as drafted was to include factors that had environmental connections. ARP has revised the discussion, which is now in paragraph 902.a of the final Order. The text states the EIS should properly analyze and disclose potential significant individual and cumulative environmental impacts a proposed airport action and its reasonable alternatives would cause. Paragraph 902.b notes that information must be clearly written so the public understands it.

Concerning paragraph 903, three commenters state a scoping meeting is not necessary for every EIS. *ARP's Response:* Agree. ARP has revised paragraph 906 in the final Order to clarify that scoping meetings are optional. ARP has removed text that confused the commenter.

Addressing paragraph 903.b, a commenter noted the paragraph discusses duties that should occur during master planning or feasibility engineering, both of which precede the EIS. *ARP's Response:* Agree. ARP has urged airport sponsors to complete most or all airport planning before ARP begins preparing its EIS. Experience has shown that when planning is delayed, EIS schedules are normally delayed.

This "domino effect" occurs because FAA and other interested parties do not have the planning information that is critical to efficiently determine an EIS's scope and the analyses needed to address that scope.

To help airport sponsors complete airport planning with NEPA in mind, ARP has prepared a new Chapter 5 for this Order. That chapter outlines the connection between airport planning and how it affects timely NEPA processing. Chapter 5 of the Order incorporates information from Chapter 5 of ARP's recent advisory circular on airport planning (150/5070-6) and ARP's, Best Practices Web site. Readers may wish to review those documents for more information.

In addition, paragraph 904.b of the final Order discusses the timing of the start of an EIS. That paragraph states that FAA will start an EIS when it receives a proposed for an airport action that contains sufficient planning data or information to meaningfully evaluate alternatives and their potential environmental effects (40 CFR 1508.23). Paragraph 904.b provides this information because during the past decade, ARP has found that a lack of well-conceived and well-developed airport planning information or a 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. ARP found that this lack of data severely hampered its ability to meaningfully evaluate project impacts and prepare the EIS.

Regarding paragraph 903.c(6), a commenter stated delay is a big problem for airport development projects, with the EIS process being a major reason for that delay. The commenter states its perception is that FAA and other agencies do not appreciate the urgency that airport sponsors, airlines, and the public feel. FAA should commit to a fixed, ambitious deadline to substantially improve its performance and reduce its tendency to over analyze and conduct long-term reviews. The commenter states FAA should work in parallel with other agencies, not sequentially or separately. The draft does not reflect the need to reduce time needed for EIS preparation. The draft should include ways to oversee and coordinate EIS processes to avoid unnecessary delays. *ARP's Response:* ARP respectfully disagrees that its personnel do not appreciate the urgency the sponsor and industry feel. See the response above under General Comments, Saving Time During NEPA Process, relating to the recommendation that the Order include instructions for

milestones, deadlines, and schedules. ARP has a well-established track record of conducting concurrent reviews under NEPA and other applicable environmental laws to make the environmental review process efficient and effective. ARP notes that it will continue to work to improve the efficiency and effectiveness of the NEPA process.

Addressing paragraph 903.d, a commenter states FAA should rely on valid information sources regardless of the information's age. The same commenter states that ARP should consult with the airport sponsor before deleting an alternative. *ARP's Response:* Regarding the validity of information, ARP disagrees. The draft paragraph noted the responsible FAA official should consider whether a document's age affects its validity for NEPA purposes. ARP highlights this, not because information is of poor quality, but because due to its age, the document may no longer accurately reflect existing environmental conditions critical to FAA's decisions. Paragraph 906.d of the final Order deletes the word, "caution" and cites paragraph 1401. Paragraph 1401 discusses the need to re-evaluate EAs and EISs. Regarding consulting the sponsor about deleting an alternative, ARP agrees in part. Paragraph 906.d(1) has been revised to recommend that FAA notify the sponsor when the agency determines that an alternative studied in detail in the EA will be briefly discussed in the EIS and then dismissed from further consideration.

Concerning paragraph 904, a commenter notes that a substantial amount of "scoping" takes place before the decision to prepare an EIS occurs or before an agency publishes a Notice of Intent (NOI). The commenter suggests the Order explain how ARP should consider scoping conducted before the NOI. *ARP's Response:* Comment noted. According to 40 CFR 1501.7, scoping shall follow the publishing of the NOI. ARP recognizes substantial, good work often occurs before the NOI, but that would be consultation and does not fulfill EIS scoping requirements. The information gleaned from the pre-NOI work is often valuable and is frequently used in preparing for scoping. Instructions that were in paragraph 904 of the draft Order, now appear in paragraph 907 of the final Order but remain unchanged.

Addressing paragraph 906.b comments, a commenter suggests adding text urging the preparation of a Memorandum of Agreement (MOA) with cooperating agencies. The MOA is a very useful tool in defining roles and commitments to FAA's schedule. The

commenter notes this is a good practice and almost always improves the process and reduces delays. Another commenter objects to the need to invite agencies having permitting or approval authorities to be cooperating agencies during EIS preparation. The commenter believes cooperating agencies should be limited to those agencies that propose to implement or approve an action. The commenter states ARP should invite only agencies having discretionary approval to be cooperating agencies. The commenter further states that agencies providing funding or exercising authority over affected resources should not be cooperating agencies. A third commenter states that municipalities adjoining an airport should be cooperating agencies. A fourth commenter suggests contacting local land use agencies regarding future land uses in the airport vicinity. *ARP's Response:* Regarding the MOA with cooperating agencies, ARP agrees. Paragraph 906.a(5) of the final Order discusses a similar a document, the Memorandum of Understanding (MOU). We have revised the paragraph to encourage ARP personnel to consider the utility of entering into a formal agreement with cooperating agencies. ARP notes that a "one-size fits all" approach is not appropriate.

Turning to the comments on cooperating agency status, ARP disagrees with the first commenter and agrees, in part with the second one. As lead Federal agency, ARP is required to invite agencies having permitting or approval authority for the proposed action to be cooperating agencies (40 CFR 1501.6 and 1508.5). In addition, in January 2002, CEQ urged all Federal agencies to improve their cooperating agencies efforts by inviting participation by Federal and non-Federal entities as cooperating agencies. Following that date, ARP notified its personnel that agencies having authority for a component of a project should be a cooperating agency during EIS preparations. Paragraph 910.c of the final Order reflects those instructions. To enhance EIS preparation, the responsible FAA official may also decide to invite agencies with expertise to be cooperating agencies. This may be helpful because those agencies often have information and knowledge that aids in properly scoping and analyzing an action's environmental effects or mitigating expected environmental impacts. It may also foster good relations and facilitate early resolution of environmental concerns.

Turning to the comment that municipalities adjoining an airport should be invited to participate as

cooperating agencies, ARP believes that this it has to make decisions on cooperating agencies on a case-by-case basis. Among other things, ARP considers the potential benefits extending an invitation may offer. These considerations may include: The existence of municipal data and information that are not publicly available; the history of the relationship between the airport sponsor and the municipalities; or approval authority the municipality may have regarding an aspect of the proposed project.

Regarding the comment on recognizing local land use agencies as cooperating agencies, ARP disagrees. Paragraph 910.a recommends contacting and involving local agencies participate as "interested parties" because these agencies can provide valuable information about land uses in the airport area that may be noise sensitive or otherwise incompatible with airport operations (e.g., attracting wildlife that are known hazards to aviation). The responsible FAA official should consider the role that the local land use agency plays and the history of its relationship with the airport in determining whether it makes sense to invite their participation as cooperating agencies. Involving hostile local agencies would jeopardize ARP's ability to establish a functional working group and complete an effective and efficient NEPA process.

Regarding paragraph 906.j, two commenters question the information about a cooperating agency's failure to provide comments during scoping. A commenter seeks information on the requirement, while another states this is an, "empty threat." *ARP's Response:* Comment noted. ARP retains the text because it is not an, "empty threat." CEQ has addressed this situation and paragraph 910.i of the final Order recognizes CEQ's position on it. Those interested in that position should review Question 14.d of the Forty Most Asked Questions (46 FR 18026, March 23, 1981).

*Chapter 10 Comments:* Beginning General Chapter 10 comments. A commenter notes that the Order or FAA's Web site should provide copies of all FAA and DOT documents and orders cited in FAA Orders 1050.1E and 5050.4B or that are often used during the NEPA process. *ARP's Response:* Comment noted. ARP chooses not to include the material in Order 5050.4B. Since this information is available from other sources, ARP suggests that interested parties use web-based "search engines" to find the material. Regarding additions to Order 1050.1E, the commenter should contact FAA's Office

of Environment and Energy, the FAA office responsible for the content of that document.

Regarding paragraph 1001.e, a commenter states that the EIS should also identify the airport sponsor's "preferred alternative." Another commenter noted the text stated the airport sponsor decides if it will complete proposed action, but was questioning the statement about the conditions that would lead to a preferred alternative that is different than a sponsor's proposed action. *ARP's Response*: Addressing the use of "preferred alternative" to identify a sponsor's action, ARP disagrees. For NEPA purposes, the term, "preferred alternative" has a specific meaning. According to Question 4a of the Forty Most Asked Questions document noted in response to comment 906.j, this is the alternative that, "\* \* \* the agency [emphasis added] believes would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors."

Regarding the comment about preferred alternative differing from a proposed action, ARP notes the comment. ARP alerts the commenter that simply selecting a proposed action because that is what the sponsor wishes is "rubber stamping" an airport plan without considering its economic, environmental, and technical effects. That is not NEPA's intent, nor is that the way ARP makes its decisions. After completing its NEPA process, ARP has occasionally selected a preferred alternative that differed from a sponsor's proposed actions. As noted in the first part of this response, ARP's independent analyses and the approving FAA official's consideration of economic, environmental, and technical factors can lead to a decision differing from the airport sponsor's.

Addressing comments on paragraph 1003, a commenter states, although it recognizes FAA's final discretion in deciding an EIS's adequacy, the paragraph unduly limits airport sponsor participation in the EIS process. The comment further notes that airport sponsors play necessary and appropriate roles in EIS preparation, especially when State documents have been prepared for actions. The commenter wants ARP to revise the paragraph to allow more active sponsor participation. Another commenter seeks instructions allowing the airport sponsor to review consultant work to decide if it has been performed competently and completely per the contract the sponsor finances. A third commenter objects to excluding everyone except FAA in getting,

managing, or using raw data. The commenter suggests that local citizen advisory committees provide input to the consultant's selection. FAA's approach concerns the commenter because it may allow the agency to conclude the process without a thorough review of analytical procedures. *ARP's Response*: Regarding sponsors participating in EIS processing, please see the response to comment in this Preamble's Consultation with airport sponsors section.

Regarding the comment on the sponsor's review of consultant work for contract purposes, under 40 CFR 1506.6(c) FAA, not the sponsor, has exclusive oversight and authority to direct the EIS consultant's work. This impliedly includes the authority to assure that consultant EIS work is fully and competently performed. In overseeing and directing the work of EIS consultants, FAA decides if the contractor's work is meeting quality and timeliness requirements under the contract. When FAA becomes concerned that the consultant (contractor) is in default, then the sponsor will be given sufficient access to information to allow it make its own determination. EIS contracts are exceptions to ordinary contracts because Section 1506.6(c) overrides competing state and local procurement and contract management practices.

Turning to concerns about cost control, the current process contains ample safeguards to assure that the work is performed at reasonable costs. The sponsor has access to sufficient information, including the cost estimates in the Statement of Work, consultant invoices, and the EIS schedule, to determine whether costs are being reasonably incurred. If sponsors have concerns that the costs of the work being performed are not reasonably incurred then sponsors present those concerns to FAA and they are normally resolved.

ARP appreciates the sponsor's desire for greater access to information during the NEPA process. As discussed above in detail in response to the general comment, section, Consultation with airport sponsors, FAA meets with sponsors to discuss and reach agreement upon the access to be provided. As far as access to verify costs, the current process strikes the right balance between cost considerations and conserving the integrity of the NEPA process. FAA is aware that there have been rare, but regrettable occasions when sponsors have terminated EIS contracts due to objections to cost. On one occasion this occurred, when in

FAA's opinion, the contractor was performing work fully and competently. However, the sponsor felt the contractor's estimate for continuing work was too costly and desired not to continue to work with the contractor.

These past instances suggest additional sponsor review could have the unintended effect of making cost control a higher priority than meeting NEPA requirements. The reviews proposed would also require the agency to release contractor drafts under FOIA. This would potentially cause public confusion, a chilling effect upon agency deliberations, and diversion of agency resources from the NEPA process. It is unnecessary to expose the NEPA process to such a review with these potential consequences when there are other ample, less intrusive means available for controlling costs. Therefore, ARP does not agree that sponsors should be allowed to review consultant's work for adequacy and reasonableness of cost prior to authorizing payment.

Addressing the comment recommending citizen advisory board input in selecting EIS consultants, ARP disagrees. Federal agencies must comply with the Federal Advisory Committee Act to obtain consensus recommendations from the public. Given the time, effort, and money involved, ARP does not believe that it is practical for the FAA to convene Federal advisory committees to represent the various groups that might want to provide input to assist FAA with the very limited task of selecting airport EIS consultants.

Concerning paragraph 1004.a, three commenters objected to the statement that sponsors may develop conceptual plans or designs that depict about 20 percent of the specifications needed to build or perform other work. One of these commenters noted there is no legal authority for this change in policy or intrusion into the sponsor's affairs. The commenter notes that limiting design and engineering imposes delays in improvements, which are already, in the view of the commenter, delayed by a process that takes too long. Also, extensive design and other information may be needed to finance a project, develop mitigation, and engage the community. Section 1506.1(d) does not prevent applicants from developing plans or designs or performing work necessary to apply for licenses, permits, and assistance. Another commenter observed that this statement would appear to limit the amount of engineering/design work that an airport sponsor can undertake in anticipation of completion of the NEPA process. This

commenter recommends replacing “may develop” with “often develops.” A third commenter asks if a sponsor goes beyond the 20-percent provision, what is the responsible FAA official to do? *ARP’s Response*: ARP agrees in part. Paragraph 1004.c. of the final Order (“Plans and Designs for the NEPA process”) replaces the term “may develop” with the phrase “[n]ormally, this analysis requires \* \* \*.” Paragraphs 1004.c (2)–(4) explain that ARP discourages sponsors from developing substantially more than 25 percent of the detailed plans, except in certain cases where a sponsor is applying for a permit or monetary assistance. Paragraph 1004.c also notes that going beyond stated design development risks prompting legal challenges. It also lists the steps that responsible FAA official shall take to assure the integrity of the EIS process. These revisions clarify that FAA is establishing an approximate level of project design for its own use. It is doing this to assure that the actions it takes during the EIS, including approval of grant funds to prepare the EIS itself, meet the letter and spirit of NEPA. Section 1004.c. in the final Order also now states that completing final project design may raise issues of compliance under Section 1506.1 and is at the sponsor’s own risk. This reflects the dearth of case law concerning the responsibilities of Federal agencies and applicants when an applicant is completing final project design before the EIS process has been completed. See, CEQ’s Forty Most Asked Questions, Question 11 (46 FR 18026 March 23, 1981).

Turning to the comment that extensive design and engineering may be needed for matters within the sponsors’ prerogatives such as project financing, we note that Section 1506.1(d) permits applicants to develop plans and designs needed to apply for permits, licenses, and assistance. It is unclear under the case law whether such matters otherwise lie within the sponsors’ prerogatives during completion of an EIS. ARP has added a new subsection d to Section 1004 that acknowledges the exception for certain plans and designs and recommends that sponsors consult FAA in these circumstances to determine the level of planning needed. It also clarifies that FAA does not discourage preparation of more detailed plans in the circumstances discussed there. As noted in paragraph 1004.c.(2) and discussed above, preparation of detailed plans before the EIS is completed may engage the community in ways that are not

helpful. It has not been ARP’s experience that a greater level of detail than 25% is normally needed to develop mitigation, however, if data become available to support this statement then we will change this guidance as appropriate.

Responding to the comment about responsible FAA official duties if a sponsor exceeds the 30-percent design level, ARP does not have jurisdiction by law to halt completion of final project design by sponsors.<sup>10</sup> Section 1004 clarifies that responsible FAA officials should normally limit AIP and PFC funding for the design work in an EIS to the 25% level. See, *Village of Bensenville v. FAA*, (376 F.3d 1114 (D.C. Circuit, 2004)). Responsible FAA officials also must also warn sponsors in writing about the possible risks of not complying with 1506.1, as described in detail in new subsections (2), (3), and (4) of section 1004.c. ARP also added a new subparagraph b to Section 1004 to remind personnel about their responsibilities under related provisions concerning ALP approvals and land acquisition.

Regarding paragraph 1005.e, a commenter requests revisions to allow adoption of material other than NEPA documents. *ARP’s Response*: ARP has added a note to paragraph 1005.d addressing this issue. The note states that the responsible FAA official may use information not in NEPA documents to prepare EISs for FAA actions. However, before doing so, the official must independently review the information and accept responsibility for it. This is the same process those officials use to adopt NEPA documents that other agencies prepare.

Addressing paragraph 1007, one commenter recommended that the Order provide guidance on addressing cumulative impacts. The commenter suggested using one of these methods: as a separate impact category in the Environmental Consequences section; within each of the other impact categories; or as a separate chapter. *ARP’s Response*: 1007.i of this Order provides a summary of cumulative impacts. ARP will provide more detail on this topic in the Desk Reference it will prepare. Until ARP issues that information, document preparers and reviewers should use paragraph 1007.i, Order 1050.1E, paragraph 500c, and CEQ’s guidance on assessing cumulative impacts, *Considering Cumulative Effects Under the National Environmental Policy Act* (<http://ceq.eh.doe.gov/nepa/>

<sup>10</sup>Under 49 U.S.C. 47172, enacted in 2003 as part of Vision 100, ARP may approve design-build contracts.

[ccenepa/ccenepa.htm](http://ceq.eh.doe.gov/nepa/)). Concerning the presentation of cumulative impacts, EIS preparers may use any of the three presentation methods mentioned above in the comment summary.

Addressing paragraph 1007.d, a commenter states the Purpose and Need information is not consistent with Order 1050.1E, paragraph 405.c. Another commenter states FAA should have one clear statement of Purpose and Need. Two commenters highlight the need to consider airport design and aviation concerns in the Purpose and Need. They discuss several planning issues like load factors and airside design criteria. *ARP’s Response*: Agree in part regarding consistency with 1050.1E. ARP used information from Order 1050.1E, paragraph 405c and 506d in preparing purpose and need instructions in 5050.4B. However, ARP notes that many other FAA organizations build facilities. In contrast, as paragraph 706.b notes, an airport sponsor, not FAA, initiates proposed development projects at an airport. Sponsors apply to FAA for approval to amend airport layout plans to depict their projects and for financial assistance for construction. The instructions in 1050.1E primarily address purpose and need statements for direct Federal actions that FAA itself undertakes (e.g., constructing radar facilities, installing aids to navigation, NAVAIDS). ARP personnel require supplemental instructions because case law continues to evolve concerning the definition of purpose and need and the obligation to evaluate alternatives to a proposed action developed by an applicant for a license or permit.

ARP has revised paragraph 706.b to delete the statement formerly in paragraph 1007 “Since airport sponsors, not the FAA, propose airport projects, the responsible FAA official’s role is to review the sponsor’s proposal to determine if it meets the purpose and need.” (Paragraph 1007.d now refers the reader to paragraph 706.b.) ARP has deleted this sentence because it is somewhat inconsistent with instructions in 1050.1e paragraph 506d<sup>11</sup> and the CEQ guidance underlying it.<sup>12</sup> ARP has replaced the

<sup>11</sup> Paragraph 506d of 1050.1E states: “[The purpose and need] distinguishes between the need for the proposed action and the desires or preferences of the agency or applicant \* \* \*”

<sup>12</sup> Question 2a of the Memorandum: Forty Most Asked Questions (46 FR 18026–18038, March 23, 1981). Question 2 indicates: “In determining the scope of alternatives to be considered, the emphasis is on what is “reasonable”, rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical or economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”



sentence with the following statement in paragraph 706.b(1): “The purpose and need should be defined considering the statutory objectives of the proposed Federal actions as well as the sponsor’s goals and objectives.” The new text is consistent with *Citizens Against Burlington Inc. v. Busey*, 938 F.2d, 190 (D.C. Cir. 1991). It is also consistent with prior CEQ guidance that the applicant’s goals and objectives may be considered along with other common sense realities; CEQ Guidance on NEPA Regulations, Selection of Alternatives in Licensing and Permitting Situations (48 FR 34263 July 28, 1983).

Section 1007.d(1) summarizes 49 U.S.C. section 47171(j), which establishes a process for notice, comment, and deference to FAA Purpose and Need statements for actions at congested airports. Order 5050.4B must also supplement the instructions in Order 1050.1E relating to purpose and need statements because different legal requirements apply.

In response to the comments on airport planning, ARP agrees in part. Paragraph 706.b of the final Order mentions planning concerns in general, but does not provide much information because the purpose of the Order is to use planning input to complete the NEPA process. In preparing its advisory circular on airport master planning (AC 150/5070–6), ARP notes it is the sponsor’s duty to adequately plan an airport project before ARP starts preparing an EIS. ARP has provided information on that planning process in Chapter 5 of that AC and in paragraph 904.b of the final Order. Chapter 5 of this Order also summarizes the important link between the NEPA process and airport planning.

Concerning another comment on paragraph 1007.d, a commenter suggested adding a ninth subparagraph to discuss the need for accurate forecast data and a reasonable range among data to develop supportable Purpose and Need statements and conduct good environmental analyses. Another commenter states that using the 2001 benchmarking study to determine project that ARP would streamline to meet Vision 100 would essentially “lock” ARP to those capacity data. *ARP’s Response*: Regarding the first comment, ARP agrees. The final Order discusses the need for reasonable consistency between between a sponsor’s forecasts and FAA’s Terminal Area Forecast (TAF) to ensure proper environmental analyses in EAs and EISs. Paragraph 706.b(3) provides guidelines for judging reasonable consistency.

Addressing the comment on benchmark data, ARP declines to interpret this provision for the first time in the final Order. The plain language of 49 U.S.C. 47175(2) defines the term “congested airport” with reference to airports listed in Table 1 of the FAA’s 2001 Airport Capacity Benchmark Report. There is sparse legislative history on this topic. Section 47175 also provides that a congested airport must be “an airport that accounted for at least 1% of all delayed aircraft operations in the United States in the most recent data available to the FAA Administrator. In the context of delay, Congress explicitly provided for use of the most recent data available. The final Order includes a footnote to paragraph 1007.d. stating that congested airports are those accounting for 1% of all delayed aircraft operations in the U.S. using data in FAA’s 2001 Airport Capacity Benchmark Report (49 U.S.C. 40129(e)). The footnote further states that ARP’s Planning and Environmental Division should be contacted for more information if needed. Notably, the FAA’s 2004 Airport Capacity Benchmark Report added only 4 airports to the list (Cleveland-Hopkins, Fort Lauderdale-Hollywood, and Portland International Airports, and Chicago-Midway Airport). We intend to seek clarification of Congress’ intent as part of the reauthorization of the agency’s enabling legislation. Addressing paragraph 1007.e, a commenter requests including valuable information from paragraph Order 5050.4A for the term “prudent and feasible” alternative due to the requirements of section 509(b)(5) of the 1982 Airport Act (recodified at 49 U.S.C. 47106(c)(1)(B)) and section 4(f) of the Dept. of Transportation Act (recodified at 49 U.S.C. 303(c)). Also, a number of commenters discuss the term “reasonable” and request further guidance on it. One commenter indicated that “and achievable” should be deleted. They also stated the draft’s discussion of the terms “reasonable” and “possible/feasible and prudent” appeared to be inconsistent. *ARP’s Response*: Regarding definitions for the term “feasible and prudent,” ARP agrees. ARP has revised paragraphs 1007.e(4) and (5) of the final Order to clarify that the phrase “feasible and prudent” is used in both statutes. ARP has also provided additional guidance regarding the term “prudent” to reflect recently updated (March 2005) FHWA guidance on the “feasible and prudent” standard under Department of Transportation Act Section 4(f),

(recodified at 49 U.S.C. 303).<sup>13</sup> For example, based on the new guidance “prudent” means an alternative that must achieve the Project’s purpose and need. We have also noted in this paragraph that Section 509(b)(5) addresses alternatives to the project while alternatives to the use are involved under DOT Section 4(f).”

Addressing the comment regarding consistent terminology, ARP disagrees. Although the terms are used throughout the Order, the appropriate term was used depending upon the applicable legal context, that is, the NEPA document being prepared and the applicable special purpose law. When discussing EAs, the term “reasonable” is used (paragraph 706.d), but when discussing EISs addressing new airports, new runways, or major runway extensions, the terms “possible and prudent” are also used. Here, EISs addressing these actions must include the terms “possible and prudent alternative” to meet the requirements of 49 U.S.C. 47106(c)(1)(B). In this case, the Secretary of Transportation (Secretary) may approve a project grant application for those airport facilities having significant adverse effects only after finding that no possible and prudent alternative exists (paragraph 1007.e(4) of the final Order). Also, the term “feasible and prudent” must appear in EISs addressing any transportation action that would use section 4(f) resources as noted in paragraph 1007.e(5) of the final Order. Section 4(f) provides that the Secretary may approve a project that would use a 4(f)-protected resource only if there is no prudent and feasible alternative to using the protected resource and the approved project includes all possible planning to minimize harm to the resource. Finally, projects involving wetlands and floodplains require the analysis of “practicable” alternatives (paragraph 1007.e(6)).

Addressing the improper use of the word, “achievable” and Section 4(f) requirements, ARP agrees that was a typographical error. ARP has corrected the text in paragraph 1007.e(4) of the Order. It now repeats the requirements in 49 U.S.C. 303(c)(1) regarding, “\* \* \* all possible planning to minimize harm.”

Concerning paragraph 1007.f, a commenter states the information on Affected Environment is vague. *ARP’s Response*: Disagree. The Order provides the same information in Order 1050.1E,

<sup>13</sup> See, Section 4(f) Policy Paper, dated March 1, 2005. Review the paper’s “Section 4(f) Evaluation” section focusing on *Examples of Alternative Selection Process*. <http://environment.fhwa.dot.gov/projdev/4fpolicy.asp#alternatives>.

paragraphs 405e and 506.f. Paragraph 706.e discusses what an EA's Affected Environment should contain. Paragraph 1007.f discusses the information an EIS's Affected Environment section would need and incorporating information from an EA in that EIS section.

Addressing paragraph 1007.g, a commenter recommends including Appendix A from 1050.1E. Another commenter sought information on the sequence in which EISs should discuss environmental consequences. *ARP's Response:* Regarding Appendix A, ARP notes the comment. ARP has addressed this issue in various parts of this preamble (item a, Instructions to "NEPA-like" states, Desk Reference). To summarize, ARP will issue the Desk Reference after it issues this Order. Until then, ARP staff and other interested parties must use Appendix A of Order 1050.1E for information on assessing resources outside NEPA. When ARP issues the Desk Reference, all parties may use the Desk Reference to analyze airport actions.

Concerning the sequence of consequences, paragraph 1007.g(2) does not require alphabetical presentations in NEPA documents. Document preparers should present the information in the most informative, "easiest-to-understand" way. Readers should note that in preparing Appendix A for Order 1050.1E, the authors simply presented the resources in alphabetical order for easier document and reference use. That sequence does *not* dictate the presentation of impacts in alphabetical order.

Regarding paragraph 1007.j, a few commenters suggested electronically distributing NEPA documents to reduce costs. *ARP's Response:* The responsible FAA official may use CDs or a Web sites to distribute EISs. ARP realizes that not all interested parties have access to electronic documents, so the final Order also mentions hard copy availability. Like other FAA organizations, ARP encourages electronic distribution to reduce costs, delivery time, and environmental concerns (waste, transportation, etc.) associated with hard copies.

Concerning paragraph 1007.n, a commenter notes the instructions here repeated information in paragraph 1007.m and caused some confusion. *ARP's Response:* Agree. Paragraph 1007.n incorporates and re-arranges information on using and distributing EIS appendices and reference material. Paragraph 1007.o now presents information about incomplete or unavailable information formerly in paragraph 1007.n(3).

*Chapter 11 Comments:* ARP received no general comments on this chapter. Turning to paragraph 1100, two commenters note the Order should state sponsors should be able to review preliminary draft EISs and other information used to prepare it.

*ARP's Response:* Comment noted. ARP refers readers this Preamble's Consultation with Airport Sponsors section.

Regarding paragraph 1101.a, a commenter states local municipalities adjoining the airport should review draft EISs. The commenter also states the National Park Service (NPS) should review those documents. Another commenter notes some entities should receive copies of draft EIS (metropolitan planning organizations, local governments), while others need not review the document (asbestos regulators). *ARP's Response:* Comments noted. The draft Order reflects the requirements under 40 CFR 1503.1. FAA obtains comments from the entities named in these comments in the circumstances identified. Paragraph 1101.a(1)–(5) as revised clarifies that FAA requests comments from various entities. These include municipalities or state transportation departments that do not qualify under 1503.1(a)(2) or the public under 40 CFR 1503.1(a)(4) when either entity has an interest in the proposed project or may be affected by it.

Addressing paragraph 1101.b, a number of commenters stated electronic distribution should be an option. *ARP's Response:* Agree. Paragraph 1101.b contains this instruction. Also, see response to comment for paragraph 1007.j.

Concerning paragraph 1101.(d), a commenter states there is no need to publish a press release to announce draft EIS availability. *ARP's Response:* Agree. Regulations at 40 CFR 1506.6(b)(3)(iv) provide that Federal agencies shall: "\* \* \* (b) provide public notice of \* \* \* the availability of environmental documents so as to inform those persons and agencies who may be interested or affected \* \* \*. (3) In the case of an action with effects primarily of local concern the notice may include: \* \* \* (iii) Publication in local newspapers \* \* \* (v) Notice through other local media." Paragraph 1101.b(3) clarifies that the responsible FAA official must provide notice of the draft EIS's availability to the public. The paragraph further states that the responsible FAA official may do so by sending a press release to local media serving the project area. ARP believes press releases are excellent ideas, since

many people in an affected area read local newspapers.

Concerning paragraph 1102.b, a commenter states this paragraph should include action-forcing deadlines and procedures to increase the likelihood or require timely reviews. *ARP's Response:* See the Response to the general comment, Saving time during the NEPA process and streamlining the NEPA process. In addition, readers should note that paragraphs 1102.b(1) and (2) of the final Order now discuss altering the prescribed DEIS review periods to reflect requirements in 40 CFR 1506.10.(d).

Regarding paragraph 1104, a commenter notes that other agencies should not have discretion on when a draft EIS is ruled inadequate. FAA should have the final discretion regarding document re-circulation. *ARP's Response:* Agree. Paragraph 1104 of the final Order clarifies this is the responsible FAA official's decision.

*Chapter 12 Comments:* ARP received no general comments on this chapter. Addressing paragraph 1200, a commenter states airport sponsors should be consulted on all comment responses and have reasonable opportunity to review all proposed responses. The commenter notes this is needed because issues may be raised for the first time during the comment period, and this will trigger the first response to a substantive issue. *ARP Response:* ARP has revised this paragraph to indicate that the responsible FAA official must consult the airport sponsor before finalizing a response to a comment that would commit the sponsor to change the proposed project, change the operation of the airport or change proposed mitigation measures. See the response to the general comment, Consultation with airport sponsors, for further explanation.

Regarding paragraphs 1203.c and 1203.e, a commenter states the requirements concerning Section 4(f) and wetlands, respectively, could conflict and prevent a project from moving forward. The commenter suggests including information to address this situation. *ARP's Response:* Agree in part. ARP has revised paragraph 1204.a of the final Order advising the responsible FAA official to watch for this situation. It states that if there is an alternative under consideration to comply with another special purpose law, and it conflicts with the alternative that would avoid Section 4(f) use or minimize effects on a 4(f)-protected resources, the official must carefully evaluate both alternatives and balance the harm the alternatives

would cause. This balance should be in consultation with pertinent resource agencies. The official must recommend the alternative avoiding Section 4(f) use or reducing impacts on a 4(f) resource if it meets purpose and need. However, there are times where important non-4(f) resource impacts must be weighed to determine the most prudent alternative.<sup>14</sup> Therefore, ARP does not agree with the commenter that such conflicts prevent FAA from making decision to move forward with airport actions. Before making a decision, the approving official should discuss this with the airport sponsor to alert the sponsor to the situation.

Addressing paragraph 1202, a commenter states ARP should quickly alert a sponsor to the fact that its preferred alternative is not the sponsor's proposed action. *ARP's Response:* Agree. Paragraph 1202 of the final Order tells the approving FAA to notify the sponsor about this as early as possible and follow the process outlined in paragraph 801.

Concerning paragraph 1203, a commenter states the information discussed should not be in the final EIS. Instead, it should be in the action's administrative record. Addressing paragraph 1203.b(1), a commenter questions the provision noting sponsor certification for a public hearing and placing that information in an EIS. *ARP's Response:* Disagree as to the information being placed in the administrative record.

Addressing paragraph 1203.b(1), a commenter questions the provision noting sponsor certification for a public hearing and placing that information in an EIS. *ARP's Response:* Disagree as to the information being placed in the administrative record. ARP has revised the title of the paragraph to clarify that it relates to AIP-eligible airport projects and has revised the text to specify that this integrates environmental requirements under 49 U.S.C. 47106 and 47107(a). Notably, the review and finding under 47106(c)(1)(B)(1)(ii) must be a matter of public record. The approving FAA official needs this evidence to make the necessary determinations in findings in the Record of Decision (ROD) concerning these AIP environmental requirements. As to the hearing, FAA and the sponsor typically provide this opportunity for a hearing during the NEPA process. This is the most appropriate time for a hearing concerning a proposed airport project's

economic, social, and environmental effects and its consistency with local or state planning objectives. For these reasons, it is appropriate for FAA to integrate this certification requirement into its NEPA procedures.

Concerning paragraph 1203.g(1), a commenter asks why getting permits cannot occur as a grant assurance, since sponsors can get other permits such as section 404 permits after FAA completes its NEPA process. *ARP's Response:* The approach the commenter suggested would not be consistent with NEPA or recent initiatives to streamline NEPA reviews. Various paragraphs in Chapter 12 reflect requirements under 40 CFR 1500.5(g). That regulation provides that Federal agencies: "\* \* \* shall [emphasis added] reduce delays\* \* \* by integrating NEPA requirements with other environmental review and consultation requirements." For example, paragraph 1208 addresses coastal zone consistency requirements that ARP addresses during the NEPA process. ARP requires this because during NEPA, it must analyze and disclose potential impacts on resources (in this case, coastal resources) as part of the NEPA process. Also, FAA, as the lead agency, must ensure compliance with the Coastal Zone Management Act before it may take final agency action to approve an airport development project (see 15 CFR subparts C and D, part 930).

Admittedly, FAA has had some difficulty integrating compliance with section 404 Clean Water Act permitting requirements into some of its NEPA analyses. As a result, for projects such as the third runway at Seattle International Airport, the Corps prepared a supplemental NEPA document after FAA completed its EIS and issued its ROD. In the past, sponsors have been somewhat reluctant to invest in the additional design and engineering work needed for a permit before FAA completes its environmental review. As part of ARP's renewed efforts to reduce delays and streamline its environmental reviews, ARP is improving its performance in this area.

Regarding 1205.b, two commenters asked clarification on extending final EIS review periods. *ARP's Response:* Agree. Readers should note that paragraph 1211.b of the final Order clarifies 40 CFR 1503.1(b). That regulation states that FAA may request comments on an FEIS.

Regarding paragraph 1206, two commenters noted a mistake about the time to refer a final EIS to CEQ. *ARP's Response:* Agree. The draft contained a typographical error addressing the timing of a referral. Paragraph 1212.a(2) states that a Federal agency may refer a

proposed major Federal action to CEQ no later than 25 days after the final EIS has been made available to the public, commenting agencies, and the EPA.

*Chapter 13 Comments:* ARP received no general comments on this chapter. Concerning paragraph 1301.a, a commenter states the draft Order implies the Record of Decision (ROD) identifies, "\* \* \* material representations in the FEIS." The commenter states this is important because as the proposed action's details change sponsors need to know if a written re-evaluation of an EIS is needed. The commenter suggests that the ROD incorporate by reference information in the final EIS. *ARP's Response:* Disagree. Approving FAA officials provide rationales for their decisions in RODs. ARP has developed a format to do so, and the instructions in the draft and final Orders provide that information. Instructions in paragraph 1401 of the final Order discuss circumstances that may require a re-evaluation. In summary, not all changes warrant a re-evaluation. The responsible FAA official may use discretion in deciding the need for that. In doing so, the official would determine if changes to the proposed action or other factors regarding the affected environment would cause environmental effects not previously analyzed or worsen those already studied.

Concerning paragraph 1301.c(2), a commenter asks why an approving FAA official would choose a preferred alternative different from one, "\* \* \* described in the FEIS he/she has just approved"? *ARP's Response:* Comments on the final EIS (paragraph 1211.b) or new information or technology may lead the decision maker to select an alternative that differs from the agency preferred alternative identified in the final EIS. The decision maker may determine that another alternative is superior when balancing all relevant factors or that an applicable special purpose law requires selection of another alternative. ARP includes instructions on this rarely used, but possible situation to ensure its staff has instructions on the process it must follow in this situation.

Addressing paragraph 1301.g(4), a commenter objects to the paragraph. Zoning and compatible land use decisions are local responsibilities, not FAA's. Therefore, FAA cannot or should not impose more requirements on a sponsor to ensure the airport is compatible with surrounding areas. *ARP's Response:* Paragraph 1301.g(4) uses language in paragraph 99.b(4) of 5050.4A to clarify language that was in

<sup>14</sup> See, Section 4(f) Policy Paper, dated March 1, 2005. Review the paper's "Section 4(f) Evaluation" section focusing on *Examples of Alternative Selection Process*. <http://environment.fhwa.dot.gov/projdev/4fpolicy.asp#examples>.

the draft Order. The paragraph indicates that this is one guideline for environmental assurances in grant agreements and other documents. The special commitment would relate to the noise effects of the proposed airport project. For example, a runway extension might require zoning an area for industrial use. This guideline is consistent with the obligation sponsor's of federally funded airports assume under 49 U.S.C. 47107(a)(10). That section requires the sponsor, to the extent reasonable, to take appropriate action to restrict land uses next to or near the airport to uses that are compatible with normal airport operations.

Concerning paragraph 1302.e, a commenter suggests adding text to the ROD to address mitigation and the need to include all practicable means to minimize environmental harm the preferred alternative would cause. Conversely, if that mitigation is not in the ROD, the official provides rationale for not including it. The commenter notes 40 CFR 1502.2(c) states this provision. *ARP's Response:* Agree. The draft inadvertently omitted this. Paragraph 1301.e of the final Order includes this information.

Paragraph 1303 of the final Order discusses issuance of the Record of Decision (ROD). Paragraph 1303 states that the approving FAA official cannot issue a ROD until 30 days have elapsed from the date EPA publishes the Notice of an FEIS's availability in the **Federal Register**. The paragraph also notes EPA may reduce the 30-day "wait period," if FAA shows compelling reasons of national policy to do so (40 CFR 1506.10(d)). Conversely, EPA may extend the 30-day "wait period," if a Federal agency provides compelling reasons of national policy supporting that extension. However, EPA may do so only after consulting with FAA. EPA may not extend the "wait period" more than addition 30 days, if FAA does not agree with a longer extension (40 CFR 1506.10(d)).

*Chapter 14 Comments:* ARP received no general comments on this chapter. Addressing paragraph 1401, two commenters express concern about the 3-year longevite instruction. One commenter notes that CEQ guidance does not define document longevite but, instead, uses various tests to determine a document's adequacy and reliability. The commenter seeks information on how the time limit was set and instances where it may not apply. The other commenter notes that Question No. 32 in CEQ's Forty Most Asked Questions (46 FR 18026, March 23, 1981) uses a 5-year "rule of thumb."

The commenter argues that FAA must not use the shelf life as a reason for not preparing EIS for phased projects. Another commenter seeks information on when the shelf life begins. *ARP's Response:* FAA must follow requirements in DOT Order 5610.1C, paragraph 19d, and Order 1050.1E, paragraph 514. Besides meeting DOT and Order 1050.1E requirements, ARP includes this information in paragraphs 1401.b and c to address the many questions it has received on this topic since publishing FAA Order 5050.4A in 1985.

In response to the phasing comment, ARP does not use the 3-year shelf life to avoid EISs (or EAs) for phased projects. In fact, paragraph 1402.c(3) of the final Order discusses this issue.

Finally, responding to the question on the start of the 3-year period, paragraphs 1401.b and c provide that information. For draft EISs (and EAs), that period begins when the responsible FAA official completes FAA's review of the draft document. For final EAs, the time starts when the responsible FAA official accepts the airport sponsor's final EA as a Federal document. FEIS "start time" is the date the approving FAA official signs the EIS approval declaration.

Concerning paragraph 1402, a commenter states a supplement should be required every 5 years and a supplement should be triggered if new information is available. *ARP's Response:* Agree in part. ARP disagrees a supplement is needed every 5 years. Re-evaluations address this issue. If there is no substantial change in the project and on significant new information bearing upon environmental impacts becomes available in that period, there is no need to supplement. While not all new information requires a supplement, a supplement is needed in if new information is available as the commenter noted. Paragraph 1402 of the final Order discusses this.

For paragraph 1402.b(2), a commenter notes that changes in the affected environment may require more evaluation. *ARP's Response:* Agree. The draft paragraph noted that, "significant new changes, circumstances, or information" may become available. To ensure users understand this phrase includes affected environment, paragraph 1402.b(2) now specifies that factor.

Addressing paragraph 1402.d notes that a new FONSI may be needed if an EA is supplemented. *ARP's Response:* Agree. Paragraph 1402.d(3) of the final Order includes this provision.

Concerning paragraph 1404, a commenter states emergencies should

be CATEXs. *ARP's Response:* Disagree. Regulations at 40 CFR 1506.11 address emergencies when an EIS is normally required. CEQ does not designate the NEPA process for these situations. Instead regulations require agencies, in consultation with CEQ, to set up alternative arrangements to control the emergency's immediate impacts. Paragraph 1404 addresses emergency situations.

*Chapter 15 Comments:* Beginning General Chapter 15 comments. A commenter states this chapter repeats information in Order 1050.1E, Appendix D. The chapter should focus on issues that the Appendix does not address. *ARP's Response:* Disagree The commenter is correct that much of Chapter 15 includes information from Appendix D, but ARP includes this information to complete the Order's instructions and minimize reliance on 1050.1E.

Addressing paragraph 1504.b(2), a commenter states the need to relieve airport congestion is not an emergency situation. *ARP's Response:* Agree. ARP has not and does not intend to use NEPA's emergency provisions to address airport congestion.

Concerning paragraph 1505.k, a commenter states that FAA should not have the ability to force another agency to issue approvals or authorizations according to a rigid timetable. It states that reporting missed deadlines, "has the appearance of a veiled threat \* \* \* contrary to U.S. government edicts to streamline procedures and reduce paperwork." The commenter recommends that FAA use a constructive, less "heavy-handed approach" because the stated instructions will cause, "an unbelievably large amount of manpower and wasted taxes." *ARP's Response:* Comment noted. The instructions in this paragraph and the final Order reflect Congress' requirements (see Title III of Vision 100—The Century of Aviation Re-Authorization Act of 2003, section 47171). They are not FAA's attempt to use a "heavy-handed approach."

*Appendix A Comments:* A commenter suggests deleting the example of a "short-form" EA because it is a poor example. *ARP's Response:* Agree. The Desk Reference will provide a revised example of a short-form" EA for guidance and information.

#### Comments Addressing Table 1 (Now Table 6-1 of the Final Order)

*Avigation easements.* A commenter suggested adding these easements to the list of categorical exclusions. *ARP's Response:* Avigation easements qualify for categorical exclusion under

paragraph 307d of FAA Order 1050.1E when carried an airport sponsor carries them out as parts of an FAA-approved noise compatibility program under 14 CFR part 150. They also qualify for categorical exclusion under paragraph 310z of FAA Order 1050.1E when related to topping or trimming trees to meet standards for removing obstructions to navigable airspace under 14 CFR part 77. FAA invites the commenter to specify other circumstances, if any, in which a categorical exclusion should be available for aviation easements. ARP will consider this information in determining whether to recommend such a change to Order 1050.1E.

**Snow equipment.** A commenter noted the table does not include snow equipment. Please add it per Order 1050.1E. *ARP's Response:* Agree. Table 6-1 of the final Order includes this under "Safety equipment for airport certification."

**Wildlife Hazard Management Plan (WHMP).** A commenter stated the relationship between NEPA and WHMP approval is not very clear. What is the status of Part 139 certification during an extended NEPA review of a WHMP? *ARP's Response:* Paragraph 209 of the final Order has been revised to provide clearer instructions concerning application of NEPA to WHMP approval and implementation. The sponsor's filing of a WHMP for approval under 14 CFR 139.337(d)(1) satisfies the sponsor's Part 139 certification requirements. Because FAA approval of a WHMP normally qualifies for categorical exclusion under Paragraph 308e of Order 1050.1E, extended NEPA review for WHMP approvals will be unusual.

#### Comments Addressing Table 2 (Now Table 6-2 of the Final Order)

**Airfield improvements, aircraft parking area.** A commenter suggested adding taxiways. *ARP's Response:* Agree. ARP includes taxiways in the table. It is included in Order 1050.1E, paragraph 310.e.

**Airfield improvements, roads.** A commenter suggested inserting the word, "permanently" regarding change in Level of Service. *ARP's Response:* Agree. ARP made the change.

**Cargo building.** The commenter notes the annotation isn't clear. The statement, "similar in size" doesn't address large buildings covering many acres. Please clarify the annotation to ensure it states, "within the same footprint as the existing [building]." Without that information there is a chance to categorically exclude large facilities having substantial impacts. *ARP's Response:* Agree in part. ARP is

not authorized to change the text or intent of Order 1050.1E, paragraph 310h. Therefore, we cannot add the suggested wording. However, ARP agrees there is a need to provide some way of determining if an action "would substantially expand a passenger handling or cargo building." Footnote 2 in Table 6-2 provides information on determining if a terminal or cargo facility would be substantially expanded. That information focuses on potential noise and air quality issues, since most expansions typically involve those issues.

**Conveying airport land.** A commenter stated this should refer to only Federally-owned land to meet Order 1050.1E. *ARP's Response:* Agree. ARP changed the text. We unintentionally omitted the qualifying words, "federally-owned."

**Deicing/anti-icing facility.** A commenter asks if this facility includes stormwater collection, diversion, conveyance and treatment or recycling facilities? *ARP's Response:* Yes. All of these items are included because they help prevent significant water quality effects due to de-icing/anti-icing activities. Of course, if building or operating any of these items would involve extraordinary circumstances, the responsible FAA official would need to determine if an EA or EIS is needed.

**Low emission technology equipment.** The commenter is unclear on how Order 1050.1E, paragraphs 309g, 310n, and 310u apply to this equipment. *ARP's Response:* ARP states the disturbances to build infrastructure within airport boundaries needed for this equipment cause many of the same effects the cited paragraphs address. In addition, the environmental benefits due to operating this equipment help to improve airport-related air quality. Paragraph 309.g of Order 1050.1E addresses upgrading power and control cables for existing facilities and equipment noted in Order 6850.2, Visual Guidance Lighting Systems. Since the low emission equipment requires electrically powered charging stations and other electrical power supply, upgrading existing power and control cables to service low emission equipment has impacts like those activities paragraph 309.g addresses. Paragraph 310n of Order 1050.1E addresses minor facility expansion not requiring additional land. ARP believes this paragraph applies because low emission equipment service facilities often are built near aircraft operating areas or other disturbed areas that paragraph 310n addresses. Finally, ARP believes Paragraph 310u of Order 1050.1E addresses closing and removing above

ground or underground storage tanks (AST/USTs) at an FAA facility. Although the public-use airports ARP oversees are not FAA facilities, using the same AST/UST removal instructions as those FAA facilities would use (FAA Order 1050.15A, Fuel Storage Tanks at FAA Facilities), and following EPA regulations (40 CFR 280, 281, and 112) would prevent significant impacts due to removing AST/USTs. This removal often accompanies low emission technology equipment purchase and use at an airport.

**Non-U.S. waters, including wetlands and categorically excluded actions.** A commenter objected to considering these resources because the Corps' regulations do not address them. *ARP's Response:* Disagree. NEPA, and special purpose laws like the Fish and Wildlife Coordination Act, and Executive Order 11990, Wetlands, do not differentiate between jurisdictional and non-jurisdictional wetlands. Designation as a "navigable waterway" does not minimize a resource's ecological value. Including this information also reflects information in Order 1050.1E, Appendix A, section 18 addressing wetlands. ARP also provides information on this issue to address a number of questions it has received about these non-jurisdictional waters and wetlands. Table 6-2 includes a new categorical exclusion addressing categorically excluded actions in non-jurisdictional wetlands. ARP proposed that categorical exclusion in its December 16, 2004, Notice of Availability of draft Order 5050.4B. Based on comments received, ARP has inserted information to address non-jurisdictional wetlands in Table 6-2.

**On-airport obstruction treatment.** A commenter requests not limiting actions to tree trimming or vegetation clearing. The commenter suggests including any non-mechanized land clearing. *ARP's Response:* Disagree. The annotation as written and paragraphs 310l or 310z of Order 1050.1E focus on addressing obstruction to air navigation. Paragraphs 310l and 310z do not limit actions to non-mechanized methods. Therefore, the recommended change is not needed. Reviewers must consider any extraordinary circumstances related to obstruction removal actions to determine if the action is a CATEX or if it requires an EA or EIS.

**Ownership change by purchase or transfer.** A commenter asks why transfer by purchase is not included. *ARP's Response:* Agree. We have revised the text to include this action to better reflect Order 1050.1E, paragraph 307m.

**Releasing airport land.** A commenter requests changing the annotation to

clarify if an environmental analysis is needed for short-term leases (i.e., less than or equal to 5 years). *ARP's Response:* Agree. ARP has revised the text for this action to better reflect the intent of Order 1050.1E, paragraph 307b. The responsible FAA official must consider the environmental effects associated with airport land releases, regardless of the duration of the release.

*U.S. Waters, including wetlands and categorically excluded actions.* A commenter strongly objected to limiting categorical exclusions to those that qualify for General Permits. The commenter states involvement of U.S. waters or wetlands should not disqualify a CATEX. In Alaska, it is a rare event that an action does not involve waters of the U.S. The reason for qualifying for a CATEX should depend on the impact, not a regulatory authority. Another commenter suggests that FAA work with the Corps of Engineers to develop a category of actions that Nationwide Permit No. 23 would cover. This would address many actions having minor impacts on U.S. waters, including wetlands. Commenters from the State of Alaska argue this is needed to address the number of actions in that state involving waters and wetlands and to "streamline" the NEPA process. Another commenter sought guidance on the need for sponsors to create new wetlands to replace those lost. This mitigation may be needed under the Federal government's "no net loss policy." Several commenters stated the annotation should not reference the Corps' General Permit Program, but instead, use the words, "Corps of Engineers Nationwide Permit" or "Corps of Engineers Regional Permit." Another commenter states this and other CATEX omit state water permitting and Coastal Zone Management Act (CZMA) Federal consistency requirements. *ARP's Response:* Disagree. Tables 6-1 and 6-2 summarize those sections of the CATEXs in FAA Order 1050.1E, paragraphs 307-312 specific to airports. The Office of Environment and Energy (AEE) is responsible for coordinating substantial, agency-wide changes such as this one to Order 1050.1E (see Order 1050.1E, paragraph 10.0). In addition, actions falling under General Permits are those that do not normally cause significant environmental impacts. That is why they are CATEXs in Order 1050.1E. Therefore, when preparing Order 1050.1E, it seemed appropriate for FAA to develop CATEXs based on General Permits to compliment the Corps' General Permit Program.

Addressing the suggestion about Nationwide Permit No. 23, readers should review the above response. ARP informs the commenter that FAA developed CATEX paragraph 310k in Order 1050.1E to address, "actions having minor impacts on U.S. waters and wetlands." FAA did this to help streamline its NEPA process. Earlier versions of Orders 1050.1 and 5050.4 required EAs for *all* FAA actions affecting U.S. waters or wetlands, regardless of the type of project or amount of wetland affected.

Concerning the comment on "no net loss," ARP believes required consultation with expertise agencies addressing wetland impacts would address the extent of required mitigation.

Regarding the comments that the Order's annotation should not reference the Corps' General Permit Program, but instead, use the words, "Corps of Engineers Nationwide Permit" or "Corps of Engineers Regional Permit," ARP disagrees. ARP sees no need to change the annotation. The term, "General Permit" includes Nationwide, Regional, and Programmatic Permit Programs (61 FR 241 65874).

Concerning, coastal zone consistency, we agree. Readers should note the extraordinary circumstance evaluation in Table 6-3 includes the need to examine potential project impacts on coastal zone resources.

#### **Comments Addressing Table 3 (Now Table 6-3 of the Final Order**

*General Comment:* A number of commenters noted the table did not include information addressing federally-listed endangered/threatened species, Section 4(f), Section 106, prime/unique farmlands, and some other resources. Another commenter notes confusion may occur about the expertise agency having jurisdiction over resources involving certain extraordinary circumstances. The commenter suggested the table provide information about the agency(ies) with whom the sponsor or FAA would consult. A commenter noted that the table did not address inconsistency with Federal, State, local, or Tribal laws. The commenter requested adding this text from Order 1050.1E, paragraph 304j. *ARP's Response:* Agree. Table 6-3 includes the important information the commenters noted.

*Air Quality.* Some commenters are troubled by FAA-wide guidance. Now, that guidance states that if an action causes air pollutants to exceed respective National Air Quality Standard (NAAQSA) thresholds, costly, time-consuming air quality modeling

using dispersion analysis is needed. The commenter requests that FAA provide guidance to clarify this issue, perhaps by recognizing General Conformity's applicability analysis. If this analysis shows emissions would be below NAAQS thresholds, further analysis is not needed. The commenter suggests that dispersion analysis is needed only for non-attainment pollutants at airports in non-attainment areas. *ARP's Response:* See the Response to the Comment on paragraph 408.b(1), above.

*Community disruption.* A commenter suggests using the term, "compatible land use" when deciding if land use is compatible with aviation. Using community disruption does not apply to noise compatibility, so delete it. *ARP's Response:* Disagree. Table 6-3 includes community disruption because Order 1050.1E, paragraph 304d includes that term. Noise impacts on noise-sensitive areas are addressed in Order 1050.1E, paragraph 304f, and are also included in Table 6-3 of this Order.

*Cumulative impacts.* Two commenters urge ARP and FAA to provide guidance on cumulative impact analysis. The commenter notes Order 1050.1E does not provide sufficient guidance on that important topic. The commenters argue the information is too important for a desk reference that, "has not undergone the proper vetting within the airport community." *ARP's Response:* Agree in part. ARP agrees added information on this topic is helpful. Readers should note that ARP's Desk Reference will address this issue with more guidance than Order 1050.1E presents because so many of its analysts and sponsors sought that information. However, ARP notes that Order 1050.1E at paragraph 500.c provide some information on this topic and references various portions of the CEQ regulations that discuss it. In addition, paragraph 1007.i of this Order provides helpful information from Order 5050.4A. CEQ has issued detailed guidance in a special publication that is useful for all Federal actions, not just airport actions (<http://ceq.eh.doe.gov/nepa/ccenepa/ccenepa.htm>).

Regarding publishing this information in a desk reference that has not received public vetting, ARP disagrees. As the Desk Reference merely summarizes existing legal requirements, and contains no policy guidance implementing NEPA, ARP sees little value in affording an opportunity for public review and comment in advance. Nevertheless, before issuing the Desk Reference later this year, ARP has decided to distribute selected chapters of the Desk Reference for public information purposes only (see this

Preamble's Desk Reference section for other information).

*Floodplains.* Two commenters request adding information from Order 1050.1E, Appendix A, paragraphs 9.2b and 9.2f to Table 6-3. *ARP's Response:* Disagree. Like other extraordinary circumstances Table 6-3 discusses, this entry reflects information from Order 1050.1E, paragraph 304, particularly paragraph 304.d. That paragraph does not incorporate information from Appendix A discussing how to assess extraordinary circumstances. As noted in responses to Air Quality, Table 6-3 is a tool to alert analysts that a resource could present an extraordinary circumstance warranting further study. Order 1050.1E, Appendix A provides information on conducting the analysis for each extraordinary circumstance addressing requirements outside NEPA. (ARP's Desk Reference will do likewise

for airport actions). To alert reviewers that this circumstance would apply only to actions affecting the floodplain, we have added the words, "that an action in the 100-year floodplain would cause." This matches the note referring to the Corps of Engineers or the Federal Emergency Management Agency and should help analysts screen a proposed action for floodplain impacts.

*Highly controversial action.* Two commenters suggested using information from Order 1050.1E, paragraph 304i to better describe this circumstance. *ARP's Response:* Agree. Table 6-3 refers to paragraph 9.i of the final Order. That paragraph incorporates the information from Order 1050.1E, paragraph 304.i.

*Noise.* Two commenters suggest focusing the extraordinary circumstance on noise increases within the DNL 65-dB contour to avoid confusion about

using supplemental noise metrics. They suggest using language in Order 1050.1E, Appendix A, section 11.b(8). *ARP's Response:* Agree. The table refers the reader to the noise information in paragraph 9.n of the Order. That paragraph reflects the information in Order 1050.1E.

*Water quality.* Two commenters state the text is confusing. They suggest using text from Order 5050.4A. *ARP's Response:* Disagree. Like other extraordinary circumstances Table 6-3 discusses, this entry reflects information in Order 1050.1E, paragraph 304, particularly paragraph 304h, which supersedes Order 5050.4A.

Dated: May 5, 2006.

**Dennis E. Roberts,**

*Director, Office of Airport, Planning and Programming, APP-1.*

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