

CHAPTER 11. PROCESSING THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

1100. INTERNAL AGENCY REVIEW OF A PRELIMINARY DRAFT EIS.

Before completing the draft EIS (DEIS), FAA normally prepares a preliminary draft EIS (PDEIS) for internal review. This provides FAA organizations having responsibilities for actions related to the proposed airport action or other interests in that action the opportunity to review a DEIS before FAA issues it for public review. During this internal review, FAA organizations must determine if the PDEIS contains the analyses needed for those organizations to make their findings and if the document adequately covers the their respective actions and concerns. Coordination is also necessary to ensure that other FAA organizations having responsibilities related to the proposed action fulfill those responsibilities if FAA approves the proposed action.

a. PDEISs for streamlined airport projects. Chapter 15 of this Order discusses the streamlining requirements Congress mandated in *Vision 100 - Century of Aviation Reauthorization Act* (Vision 100). That Act focused on airport capacity, safety, and security projects. A part of that legislation (49 USC 47171.(b)) discusses streamlining aviation projects at congested airports.¹ When preparing a PDEIS for a congested airport, the responsible FAA official must internally distribute the PDEIS to the FAA organizations represented on the FAA “EIS Team” assembled for that project. Normally, these “Teams” include legal and technical personnel from various FAA organizations at the district, regional, and headquarters levels.

b. PDEISs for airport projects that are not streamlined. Airport actions not requiring streamlining may be coordinated and reviewed internally using a different process than discussed in 1100.a. The responsible FAA official must ensure the intra-agency, PDEIS review involves regional and district office personnel from the various FAA organizations having an interest in the proposed action. The responsible FAA official may use discretion when determining if the Airport Planning and Environmental Division (APP-400) or other headquarters organizations should review a PDEIS.

1101. DISTRIBUTING THE DEIS FOR AGENCY AND PUBLIC REVIEW.

The responsible FAA official must provide Federal, State, tribal, and local agencies with jurisdiction by law or special expertise and the public the opportunity to comment on a DEIS (40 CFR 1503.1).

a. When to seek comments on a DEIS. Text at 40 CFR 1503.4 requires FAA to consider substantive comments on a DEIS and respond to them in the final

¹ According to Vision 100, section 47175(2), a congested airport accounts for 1% of all delayed aircraft operations in the U.S. using the FAA’s the 2001 *Airport Capacity Benchmark Report*. Contact ARP’s Airport Planning and Environmental Division, if needed. Chapter 15 of this order provides more information on streamlining.

EIS (FEIS). As a result, the responsible FAA official must specifically request comments during the DEIS review period (40 CFR 1503.1(a)) from the following parties.

(1) Any Federal agency having jurisdiction by law or special expertise for an environmental impact the proposed action or its reasonable alternatives would affect, or that is authorized to develop and enforce environmental standards.

(2) Appropriate State and local agencies authorized to develop and enforce environmental standards or agencies requesting receipt of a DEIS. These agencies could include state transportation departments or municipalities having an interest in an action or significant impacts that would occur within their jurisdictions.

(3) Indian tribes and native organizations when effects may be on a reservation or affect tribal trust resources.

(4) The airport sponsor proposing the project.

(5) The public, including non-governmental organizations, having an interest in the proposed action.

b. Where to coordinate and deliver a DEIS. FAA must distribute the DEIS to the affected public and those agencies having an interest in the proposed action. Those agencies may include Metropolitan Planning Organizations or state transportation departments. To save money and resources, the responsible FAA official should consider delivering the document electronically (web sites and CDs) to those willing to review the DEIS in those formats.

(1) **Availability to agencies.** The responsible FAA official must coordinate the DEIS with the regional offices of the Federal, State, tribal, and local agencies having jurisdiction by law or expertise for affected resources. When the official requests comments on the DEIS from any agency of the Departments of Commerce, Energy, or Interior, the official must follow the following procedures. Before sending documents, the official should check with the appropriate agency to determine if it will accept the EIS and its appendices in electronic format.

(a) **The Department of Commerce (DOC).** Send 1 copy to DOC headquarters and 1 copy to the Ecology and Conservation Division in the National Oceanic and Atmospheric Administration.

(b) **The Department of Energy (DOE).** For actions having major energy-related effects, coordinate with DOE's Office of NEPA Policy and Assistance, EH-42, 1000 Independence Ave., S.W. Washington, D.C. 20585. Provide one copy of the DEIS for review.

(c) **The Department of the Interior (DOI).** Refer to paragraphs 1. through 3. below to determine the number of DEIS copies FAA must file with the DOI for comment. The responsible FAA official should send copies to the Director, Office of Environmental Policy and Compliance (OPEC), 1849 C Street, S.W., Washington, D.C. 20240. The Director will deliver the document to the proper regional office.

1. For projects in Alaska, provide 16 copies.
2. For projects in the eastern United States, including Arkansas, Iowa, Louisiana, Minnesota, and Missouri, provide 12 copies.
3. For projects in the western United States, that is, areas west of the western boundaries of AR, IA, LA, MN, and MO, provide 18 copies.

(d) **The Environmental Protection Agency (EPA).** When filing the DEIS with EPA, the responsible FAA official must certify to EPA that FAA has provided the DEIS to the public and all interested agencies. Simultaneous distribution to all parties ensures everyone interested in the action has the same amount of time to review the document. The responsible FAA official should use the following standard language in its certification to EPA and press releases announcing the DEIS's availability for comment and public hearing(s) for the proposed project:

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

(1) **Regional office(s).** The responsible FAA official must coordinate the DEIS with the proper EPA regional office and request comments on the document. Provide 1 copy of the DEIS to the regional EPA office.

(2) **Headquarters offices.** The responsible FAA official must file 5 copies of the DEIS and its appendices with EPA's HQ Office. In doing so, the official must file 1 paper copy of the documents, while the 4 remaining copies may be in electronic format (i.e., compact disk). Every Friday, EPA publishes a “Notice of Availability” (NOA) for each DEIS filed by Friday of the *previous* week. Publishing this NOA starts the DEIS public review and comment period. Once started, the approving FAA official may not make a decision on the proposed action, until 90 days after the date of the NOA of the DEIS (40 CFR 1506.10). As indicated below,

notice that the address for filing DEIS's varies with the method used to deliver the DEIS to EPA's HQ.

i. DEISs filed with EPA via the U.S. Postal Service. The FAA official should file the DEIS at:

EPA Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252-A, 1200 Pennsylvania Ave., N.W., Room 7220, Washington, D.C., 20460.

ii. DEISs filed with EPA via commercial shipping company or hand delivery. The FAA official should file the DEIS at:

EPA Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), 1200 Pennsylvania Ave., N.W., Room 7220, Washington, D.C., 20004.

(2) Public availability. When providing copies of the EIS and its appendices to the public, ask requestors if they will accept an electronic copy of the documents. As an alternative, provide the web site where those documents are available for public review.

(3) Notice of Public Availability (NOA). Title 40 CFR 1506.6(b) requires Federal agencies to notify the public of the availability of environmental documents. This is to inform people and agencies interested in the project or affected by it.

(a) Text at 40 CFR 1506.6(b) states that when actions cause effects primarily of local concern, the agency may publish the notice in local newspapers having general circulation or notifying the public through some other local media.

(b) When publishing the notice in local newspapers, the responsible FAA official should send a press release discussing the DEIS's public availability to local media serving the project area. The official should request that newspaper(s) publish the notice of the DEIS's availability on the same date EPA expects to publish its notice in the *Federal Register*.

(c) The notice should identify the FAA employee who will answer the public's questions about the DEIS's status or other information about the action. Normally, this is the responsible FAA official. FAA must provide a copy of either the *Federal Register* NOA or media notice to anyone requesting it.

(4) DEIS distribution for FAA review. The responsible FAA official must send 3 copies of the DEIS, to the Airports Planning and Environmental Division, APP-400. APP-400 will deliver the DEIS to the Office of the Chief Counsel and, if necessary, other reviewing offices.

1102. TIME LIMITS FOR REVIEWING THE DEIS. The Responsible FAA Official must provide the agencies and the interested public a minimum of 45 days to review the DEIS (40 CFR 1506.10(c)).

a. Resource agency and public review. Text at 40 CFR 1506.10(a), requires agencies to begin the DEIS review period on the date EPA publishes the "Notice of Availability" in the *Federal Register*. If a commenter does not reply within the review period, the responsible FAA official may assume the entity has no comments. Normally, FAA will grant a 15-day extension when a commenting agency requests more time to review a DEIS.

b. Altering the DEIS review period. DEIS review periods may change as noted here.

(1) Extending the DEIS review period. FAA may extend the 45-day DEIS review period (40 CFR 1506.10(d)). To do so, the responsible FAA official must inform EPA of this extension so EPA may place a notice of the extension in the *Federal Register*. In addition, EPA may extend the initial 45-day review period, if it determines another Federal agency has compelling reason of national policy concerns (40 CFR 1506.10(d)). However, in this case, EPA may do so only after consulting with FAA. Failure to file timely comments is not a sufficient reason to extend the comment period (40 CFR 1506.10(d)).

(2) Reducing the DEIS review period. EPA may reduce the 45-day DEIS review period, if FAA provides compelling reasons of national policy to do so. APP-400 will coordinate these reduced times with DOT before contacting EPA.

c. Washington headquarters review. APP-400 will provide The Office of the Chief Counsel's Airports and Environmental Law Division (AGC-600) with a 30-day period to review the DEIS. APP-400 will also send a copy of the DEIS to FAA's Office of Environment and Energy for information purposes.

(1) Headquarters review period begins on the date APP-400 requests comments from AGC-600. AGC-600 will review the document and provide its comments to APP-400. APP-400 will consolidate its comments with those of AGC-600.

(2) APP-400 may discuss some of the comments with the responsible FAA official before sending those comments to the responsible FAA official. This is to ensure there that headquarters reviewers misunderstands about the comments or information in the DEIS do not occur.

(3) APP-400 will send the comments to the responsible FAA official in memo format within the DEIS's 45-day review period (or an extended period, if one exists). APP-400's delegation memo for approval of the final EIS to the responsible

FAA official signals the region has adequately addressed headquarters' comments on the DEIS.

1103. DEIS COMMENTS. Usually, entities reviewing the DEIS will provide comments directly to the FAA regional or district Airports office responsible for preparing the document. Text at 40 CFR 1503.3 requires commenters to be as specific as possible when expressing their concerns on the DEIS's adequacy. Commenting agencies should focus on the merits of the alternatives discussed in the DEIS and their environmental impacts.

a. Comments received from agencies. If the responsible FAA official decides a commenting agency has not followed the intent of 40 CFR 1503.3,² the official should consult that agency to resolve the issue. The extent of an agency's comments should be equal to the agency's involvement during the scoping process. If during the comment period, an agency restates problems resolved during scoping, the responsible FAA official should find out why resolutions developed during scoping remain problematic at the DEIS stage. The official should try to resolve those problems before FAA completes the final EIS.

b. Comments received from EPA. When EPA reviews a DEIS, it uses a DEIS rating system. EPA bases each DEIS rating on its findings regarding the proposed action's environmental impact severities and the DEIS's adequacy in addressing them.

1104. RE-CIRCULATING THE DEIS. According to 40 CFR 1502.9.(a), a DEIS must fulfill and satisfy, to the fullest extent possible, the requirements established for FEISs. FAA must prepare and re-circulate a new draft of the portion(s) of a DEIS judged "inadequate as to preclude meaningful analysis" (40 CFR 1502.9(a)). After revising the DEIS to provide the needed information, the responsible FAA official must re-circulate the complete, updated DEIS as discussed in paragraphs 1101 and 1102 of this Order.

1105. - 1199. RESERVED.

² Comments on EISs or a proposed action must be as specific as possible. They may address either the EIS's adequacy or the merits of the EIS's alternatives (see 40 CFR 1503.3(a)).