

CHAPTER 12. PROCESSING THE FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

1200. THE FEIS AND COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS). The final EIS (FEIS) must contain FAA responses to all substantive comments on the draft EIS (DEIS) to comply with 40 CFR 1503.4(a).

a. The responsible FAA official must consult the airport sponsor, if in response to a comment, FAA is considering asking the sponsor to commit to change the proposed airport, its operations, or proposed mitigation measures.

b. The responsible FAA official must ensure all substantive comments are attached to the FEIS, whether or not the comment is considered to merit an individual response. The FEIS may summarize similar comments when the number of comments on the DEIS is voluminous.

c. Where FAA has established a schedule for completing an EIS, the responsible FAA official must advise the airport sponsor when the nature or volume of comments on the DEIS are likely to require an adjustment to the schedule.

1201. COMMENT RESPONSE OPTIONS. The responsible FAA official must respond to comments on the DEIS by using one or more of the options noted in paragraphs 1201.a – f (40 CFR 1503.4(a)). The official should consult the airport sponsor as noted in paragraph 1200.a, or if an issue is raised for the first time during the DEIS review period.

a. Modify the alternatives the DEIS discusses, including the proposed action.

b. Develop and evaluate any alternative FAA has not seriously considered.

c. Supplement, improve, or modify the analyses.

d. Make factual corrections.

e. Explain why certain comments do not warrant a response, citing the sources, authorities, or reasons supporting FAA's position. If suitable, point out those circumstances that would trigger agency reappraisal of the comment or further response. The responsible FAA official should explain how the comment is being interpreted to establish the foundation for the response.

f. The responsible FAA official may use an errata sheet if document changes in response to comments are minor and address only the information noted in paragraphs 1201.d and e (40 CFR 1503.4(c)). The official should attach the errata sheet to the statement instead of re-writing the draft statement. In this case, the

responsible FAA official must circulate only the comments, comment responses, and any changes to the FEIS.

1202. FAA'S PREFERRED ALTERNATIVE. The responsible FAA official must ensure the FEIS identifies FAA's preferred alternative (paragraph 1007.e.(7)), unless a law forbids FAA from doing so (40 CFR 1502.14(e)). If the approving FAA official intends to identify a preferred alternative differing from the sponsor's proposed action, the official should notify the sponsor as early as possible. The approving FAA official should then follow the steps in paragraph 801 of this Order. That paragraph addresses a comparable situation for a proposed FONSI and its EA.

Note: FAA must identify the preferred alternative in the DEIS, if the agency has already selected one, unless a law forbids that disclosure.

1203. FEISs PREPARED FOR AIP-ELIGIBLE AIRPORT DEVELOPMENT PROJECTS. An FEIS addressing airport development actions for which the sponsor will seek Federal financial aid under the Airport Improvement Program (AIP) must also contain the information listed below. That information provides evidence to satisfy agency determinations and sponsor certifications under 49 USC 47106 and 47107. The approving FAA official will include the determinations and sponsor certifications in the Record of Decision (ROD) (Chapter 13 provide information on RODs).

a. Airport development projects. The FEIS addressing a project for which an airport sponsor intends to seek AIP funding, must contain the following evidence:

(1) The proposed action is reasonably consistent with existing plans of public agencies responsible for development in the area (49 USC 47106.(a)(1)).

(2) The Secretary is satisfied the interests of communities in or near the project location have been given fair consideration (49 USC 47106.(b)(2)).

(3) To the extent reasonable, the airport sponsor has taken or will take actions to restrict land uses in the airport vicinity, including the adoption of zoning laws, to ensure the uses are compatible with airport operations (49 USC 47107.(a)(10)).

b. Airport development involving a new airport, a new runway, or a major runway extension. An FEIS addressing a new airport, new runway, or major runway extension for which an airport sponsor intends to seek AIP funding should also provide the following information:

(1) A certification from the airport sponsor that it has provided an opportunity for a public hearing. The hearing is offered to consider economic, social, and environmental effects of the location and the location's consistency with the

objectives of any planning that the community (i.e., jurisdictional authority) has carried out (49 USC 47106.(c)(1)(A)(i)).

(2) A certification from the airport sponsor that the airport management board has voting representation from the communities in which the project would be located or that the sponsor has advised communities they have the right to petition the Secretary of Transportation about a proposed project (49 USC 47106.(c)(1)(A)(ii)).

(3) From a sponsor of a large or medium hub airport who proposes a new airport, a new runway, or a major runway extension, a certification verifying that, on request from the metropolitan planning organization (MPO) in the area where the project is located (if an MPO exists), the sponsor has made the following information available to the MPO (49 USC 47106.(c)(1)(A)(iii)):

(a) A copy of the proposed ALP amendment depicting the proposed action. and

(b) A copy of any airport master plan describing or depicting the action.

(4) When the proposed action would cause significant adverse effects on natural resources, including fish and wildlife, natural, scenic, and recreational assets, including water and air quality, and other factors affecting the environment, a finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize adverse effects (see 49 USC 47106.(c)(1)(B)). (Paragraphs 1007.e(4)(a) and (b) of this Order discuss possible and prudent alternatives).

1204. ACTIONS INVOLVING THE USE OF RESOURCES PROTECTED UNDER SECTION 4(f). FEISs prepared for airport actions that would use resources protected under Section 4(f) must contain evidence to support both of these conclusions for the ROD:

a. There is no prudent and feasible alternative to using the protected resource. In deciding if there is a prudent alternative, the responsible FAA official should note that there are times where important, non-4(f) impacts must be considered when determining the most prudent alternative.¹ In these situations, the official should exercise caution if the alternative that avoids use of a Section 4(f)-protected resource or that would minimize effects to that resource differs from the alternative that is necessary to avoid or minimize impacts to resources protected under other special purpose laws (see footnote 1). Here, the responsible official should carefully evaluate both alternatives. If needed, consult ARP's Airport Planning and Environmental Division (APP-400), Regional Counsel, or the Chief Counsel's Airports and

¹ 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.flhwa.dot.gov/projdev/4f_policy.asp#examples.

Environmental Law Division (AGC-600). The approving FAA official should also alert the sponsor to the situation.

b. The project includes all possible planning to minimize harm to the protected resource resulted from the use.

1205. ACTIONS DISPLACING PEOPLE AND BUSINESSES REQUIRING THEIR RELOCATIONS. FEISs prepared for these actions must contain the following assurances for inclusion in the ROD:

a. Fair and reasonable relocation payments and aid will be available under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

b. For housing relocation, comparable, decent, safe, and sanitary housing² is available for occupancy on the open market or will be built, if necessary, before affected people are displaced.

1206. ACTIONS INVOLVING CONSTRUCTION DIRECTLY OR INDIRECTLY AFFECTING WETLANDS. An FEIS addressing actions affecting jurisdictional or non-jurisdictional wetlands must contain evidence to make the following findings (Executive Order 11990, *Wetlands*) in the ROD:

a. There is no practicable alternative to FAA's preferred alternative. and

b. The preferred alternative includes all practicable measures to minimize resultant unavoidable harm to wetlands.

1207. ACTIONS SIGNIFICANTLY ENCROACHING ON A FLOODPLAIN. FEISs prepared for a proposed action that encroaches on a base floodplain (i.e., the area the 100-year flood engulfs) must contain evidence to make the following findings (Executive Order 11988, *Floodplains*) in the ROD:

a. There is no practicable alternative to the FAA's preferred alternative. and

b. The preferred alternative conforms to applicable state and/or local floodplain protection standards.

1208. ACTIONS IN OR AFFECTING COASTAL ZONE AREAS. FEISs prepared for an airport action in or affecting the coastal zone of a state having an approved coastal zone management plan (CZMP) must contain information from the state agency responsible for the CZMP. As explained below, that information varies, depending on the activity proposed.

² See 49 Code of Federal Regulation, Part 24.2.

a. FAA approvals for sponsor-proposed airport actions. FAA must ensure the requirements of 15 CFR, Subpart D, *Consistency for Activities Requiring a Federal License or Permit*, are completed for approvals addressing airport actions when the CZMP specifically lists those activities. For unlisted activities, compliance with Subpart D is also necessary when the responsible State agency specifically advises the sponsor or FAA that approval for an action would affect coastal zone resources and that it intends to review the approval. This is because funding and airport layout plan activities requiring “Federal license or permit” as defined in 15 CFR Part 930.51. Here, the FEIS must contain the following information:

(1) The following sponsor certification to comply with 15 CFR 930.57(b):

“The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program.”

(2) A notice from the State agency responsible for the State’s approved CZMP that the State concurs with or objects to the sponsor’s consistency certification. See 15 CFR 930.63(a) for the timing of the State’s response. Assume State agency concurrence if that agency does not issue a concurrence or objection within 6 months following the start of the CZM agency’s review (15 CFR 63(a)).

NOTE: If the responsible State agency determines the proposed action is not consistent with the approved CZMP, the approving FAA official cannot approve the action. In that case, FAA approval may occur if the Secretary of Commerce grants the sponsor’s appeal of a State’s non-concurrence. In granting the appeal, the Secretary of Commerce would find the proposed action is consistent with the purposes of the Coastal Zone Management Act or the action is necessary for national security.

b. FAA actions. Some airport actions require FAA to install navigational equipment, develop flight procedures, or take other actions to promote safe, efficient airport operation. Because FAA itself will undertake these actions, they are “Federal activities” under 15 CFR, Subpart C, *Consistency for Federal Activities*. That is, they are “functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities” (15 CFR 930.31(a)). Therefore, FEISs prepared for airport actions that include FAA activities must contain the following information, unless the requirements of an existing law applicable to FAA’s operations prohibit compliance with Subpart C (see 15 CFR 930.32).

(1) An FAA determination stating that FAA will undertake the proposed action in a manner consistent to the maximum extent practicable with the State’s approved CZMP. FAA must also include a detailed description of the FAA’s activity, the facilities it needs, and coastal zone effects. Added information is needed as noted in 15 CFR 930.39(a).

(2) The State agency’s agreement or disagreement with FAA’s consistency determination. Review 15 CFR 930.41 for the timing of the State’s response.

1209. ACTIONS INVOLVING A DISPROPORTIONATELY HIGH AND ADVERSE IMPACT TO MINORITY OR LOW-INCOME POPULATIONS.

FEISs prepared for a proposed action that will result in a disproportionately high and adverse impact on a minority or low-income population must contain evidence to make the following findings (DOT Order 5610.2, *Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations*):

a. For actions that will have a disproportionately high and adverse effect on either a minority population or a low-income population, a finding that further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is “practicable,” the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

b. For actions that will have a disproportionately high and adverse effect on a population protected by Title VI of the Civil Rights Act of 1964, a finding that:

(1) A substantial need for the action exists, based on the overall public interest. and

(2) Alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in paragraph 1209.a), either:

(a) Would have other adverse social, economic, environmental or human health impacts that are more severe. or

(b) Would involve increased costs of extraordinary magnitude.

1210. APPROVING THE FEIS. The Secretary of Transportation has delegated FEIS approval authority to the FAA Administrator. The Secretary’s concurrence is required only if the Secretary requests an opportunity to review and concur in the FEIS, or if FAA requests the Secretary’s review and concurrence.

a. Airports Program approval authority. Under FAA Order 1150.154A, *Delegation of Authority*, dated June 12, 1990, the FAA Administrator has delegated authority to approve FEIS's to the Associate Administrator for Airports (ARP-1). ARP-1 has authority to approve FEISs addressing the actions listed in paragraph (1) – (3) below. ARP-1 may delegate that authority to the region on a case-by-case basis. If APP-400 determines the FEIS is acceptable, APP-400 will inform ARP-1. ARP-1 will decide if it will delegate FEIS approval authority for those actions to the regional Airports Division Manager. APP-400 on ARP-1’s behalf will send a memo delegating that authority to the Manager if the FEIS is sufficient. Otherwise, ARP-1 will retain that authority.

(1) A new airport in a metropolitan area, unless specifically directed otherwise. For purposes of this Order, a metropolitan area is a metropolitan statistical area (MSA).³

(2) A new runway or major runway extension at a commercial service airport located in an MSA.

(3) Any action a Federal, State, or local government agency, or Tribe opposes on environmental grounds.

b. Approval declaration. To approve an FEIS, the responsible FAA official must ensure the FEIS summary contains the language presented in paragraph 1007.b.(11) of this Order.

c. Signature block. The responsible FAA official must ensure a signature block for the approving FAA official appears immediately below the approval declaration noted above.

1211. ANNOUNCING AND DISTRIBUTING APPROVED FEISs.

a. FEIS distribution. The regional or district Airports office responsible for preparing the FEIS is responsible for distributing that document as discussed below. Distribution to parties should occur simultaneously. The responsible FAA official must notify APP-400 the responsible FAA region has distributed the FEIS. If the comments received on the FEIS require FAA to prepare minor revisions to the FEIS, the responsible FAA official may choose to circulate only the changed portions of the FEIS using procedures in 40 CFR 1503.4(c).

b. Comments on an FEIS. An agency may request comments on an FEIS (40 CFR 1503.1(b)) before issuing its decision.

c. Extending the 30-day “wait period” between FEIS release and the agency’s decision. FAA may extend the 30-day “wait period” between EPA’s publication of the FEIS’s “Notice of Availability” in the *Federal Register* and the final agency decision an extra 30 days (40 CFR 1506.10(d)). The responsible FAA official must inform EPA of this extension so EPA may place a notice of the extension in the *Federal Register*. After consulting with FAA, EPA may also extend the initial 30-day review period, “upon a showing by any other Federal agency of compelling reasons of national policy” (40 CFR 1506.10(d)). Failing to file timely comments is not sufficient reason to extend the comment period (40 CFR 1506.10(d)).

³ A metropolitan statistical area is a core area containing a substantial population nucleus and those adjacent communities having a high degree of economic and social integration with that core (U. S. Census Bureau).

d. Distribution to commenting parties. Except as noted in paragraphs 1211.e and 1205.f, the responsible FAA official must send one copy of the FEIS to the agencies, organizations, and individuals who provided substantive comments on the DEIS. If the number of commenters makes the distribution impractical, the responsible FAA official should consider delivering the document in electronic format.

e. Distribution to regional EPA offices. The responsible FAA official must send 1 copy of the FEIS to the proper EPA regional office, if EPA rated the DEIS "Lack of Objections" (LO-1). Otherwise, the official must file 5 copies of the document with the regional EPA office. If EPA has comments on the FEIS, the responsible FAA official must make a reasonable effort to resolve conflicting issues. The responsible FAA official must refer unresolved issues to APP-400.

f. Distribution to EPA headquarters. To comply with 40 CFR 1506.9, the responsible FAA official must file 5 copies of the approved FEIS with EPA's headquarters office at the address given in paragraph 1101.b.(4)(b)(1) or (2) of this Order. Upon receipt, EPA will publish a "Notice of Availability" in the *Federal Register*.

g. Distribution to the DOI. The responsible FAA official must file the correct number of copies of the FEIS with DOI's headquarters office at the address given in paragraph 1101.b.(1)(c). DOI headquarters will deliver the FEIS to the correct DOI office. Refer to items (1) – (3) here to determine the number of FEIS copies the FAA should file at DOI headquarters when an action occurs in a particular state:

(1) Alaska: 8 copies.

(2) Eastern United States, including Arkansas, Iowa, Louisiana, Minnesota, and Missouri: 6 copies.

(3) Western United States (areas west of the western boundaries of AR, IA, LA, MN, and MO): 9 copies.

h. Distribution to FAA headquarters. The responsible FAA official must file 1 copy of the FEIS with APP-400 for information and future reference. This filing is not necessary when the Associate Administrator for Airports (ARP-1) approves the FEIS.

i. Public notice and availability. Besides the interested parties mentioned above, the responsible FAA official must ensure copies of the approved FEIS are available to the public at publicly accessible locations. The official should use the local media to announce the FEIS is available. To do so, the responsible FAA official should use a process similar to that used for notifying the public of the DEIS's availability (paragraph 1101.b.(3)).

1212. FEIS REFERRALS TO CEQ.

a. General. CEQ NEPA regulations at 40 CFR Part 1504 provide procedures for Federal agency EIS referrals to CEQ. The CEQ referral process permits federal agencies to bring to CEQ interagency disagreements concerning proposed major federal actions that might cause “unsatisfactory environmental effects.”

(1) Who may refer? Under CEQ regulations, any Federal department or agency may refer a proposed major Federal action to CEQ. The EPA Administrator has broader authority, under section 309 of the Clean Air Act, to refer to CEQ any proposed legislation, action, or regulation that he or she deems unsatisfactory when considering public health or welfare or environmental quality.

(2) Time limit for filing referrals. An agency will refer an FEIS not later than 25 days after the lead agency makes the FEIS available to the public, commenting agencies, and EPA (40 CFR 1504.3(b)). If FAA has issued an extension of that initial review period, CEQ will accept a referral after the 25th day (40 CFR 1504.3(b)).

(3) Notifying the lead agency about the referral. A Federal agency that intends to refer a proposal to CEQ must notify the lead agency of its intentions at the earliest possible time. If the issues are not resolved between the agencies after publication of the FEIS, and the referring agency wishes to refer the proposal to CEQ, that agency must send a letter and a statement to CEQ and the lead agency. That statement must contain the referring agency’s request that the lead agency take no action regarding the project until CEQ acts on the referral.

b. Addressing a referral notice. When the regional Airports office receives a notice of intended referral for an Airports Program EIS, the responsible FAA official must send a copy of the referral notice to APP-400. APP-400 will contact DOT’s Office of the Assistant Secretary for Transportation Policy about the referral. FAA has 25 days to respond to the referring agency's letter and statement.

c. Resolving referrals. If FAA and the referring agency resolve the issue, FAA’s ROD must contain a letter from the referring agency. The letter will state the agency and FAA have resolved the disputed issue. FAA's response to CEQ requires concurrence from the Office of the Assistant Secretary for Transportation Policy.

1213. - 1299. RESERVED.