

CHAPTER 13. THE RECORD OF DECISION

1300. DECISION ON THE FEDERAL ACTION. The approving FAA official must wait a minimum of 30 days after EPA publishes an FEIS's "Notice of Availability" in the *Federal Register* before making a decision on a proposed action (40 CFR 1506.10(b)(2)).¹ After that period passes, the approving FAA official may sign a Record of Decision (ROD), which becomes a part of the agency's administrative record for the action.

1301. ROD CONTENT. The responsible FAA official uses an FEIS as the primary reference and basis to prepare a ROD for the approving FAA official's signature. The ROD provides the public with the approving FAA official's rationale for approving or not approving a proposed action. It also references the environmental documents prepared for or used to support the proposed action as well as the FEIS. A ROD should contain the following information.

a. A brief description of the airport sponsor's proposed action. This should clearly describe what the airport sponsor is proposing and why the proposal is necessary. This section should also include the action's location and information on when the action would occur.

b. A summary of the necessary Federal actions. This section summarizes the actions FAA and other Federal agencies (if necessary) must complete before the airport sponsor may begin the proposed action. Examples include grant issuances, permit issuances, other authorizations, or specific mitigation measure requirements.

c. A summary of the alternatives considered. The ROD briefly describes the various reasonable alternatives the FEIS analyzed in detail. It should focus on these alternatives because they are the choices the approving FAA official considers when deciding how to address the purpose and need.

(1) The environmentally preferred alternative. The ROD must identify the environmentally preferred alternative (40 CFR 1505.2(b)). In identifying environmentally preferred alternative, the approving official chooses the alternative that, with mitigation, would:

(a) Promote the national environmental policy NEPA describes.

¹ Also, see Question 10.a of *Forty Most Asked Questions Concerning National Environmental Policy Act Requirements* (Vol. 46 FR No. 55, p. 18026, 3/23/1981.)

(b) Cause the least damage to the natural, biological, and physical environments. and

(c) Best protects, preserves, or improves historic and cultural resources.

(2) Proposed action. The ROD must identify the airport sponsor's proposed action.

(3) The preferred alternative. Identify FAA's preferred alternative (paragraph 1007.e.(7)). The Airports Program's statutory mission is to provide leadership in planning and developing a safe, efficient national airport system to satisfy the needs of the aviation interests of the United States. In accomplishing this mission, ARP will consider economics, environmental compatibility, and local proprietary rights, and safeguard the public investment.² ARP gives this mission appropriate weight in any final decisions regarding a proposed action.

(a) In some cases, FAA's preferred alternative might differ from the environmentally preferred alternative or the sponsor's proposed action. When that occurs, the ROD should clearly present the approving FAA official's reasons for selecting the preferred alternative (40 CFR 1505.2(b)).

(b) If the approving FAA official selects an alternative differing from the sponsor's proposed action, the official should immediately contact the airport sponsor to discuss this decision.

(c) In the rare instances when the approving FAA official selects a reasonable alternative that is not the preferred alternative the FEIS identifies, the responsible FAA official must complete the following steps. Before selecting the preferred alternative in this case, the decision maker must coordinate a draft ROD for concurrence with the same FAA and DOT organizations (if any) that reviewed the FEIS. Those offices may do one of the following:

(1) Concur without comment.

(2) Concur on the condition the ROD contain specific mitigation measures.

(3) Request preparation and circulation of a supplement to the FEIS. or

² http://www.faa.gov/about/office_org/headquarters_offices/arp/.

(4) Not concur with the approving FAA official's choice. When this occurs, the approving FAA official cannot approve the Federal action over this non-concurrence.

(d) If the FEIS indicates FAA did not comply with the requirements of the special purpose law (see paragraph 9.t) applicable to the selected alternative, the responsible FAA official must complete the evaluation and consultation the applicable law requires. Usually, this requires supplementing the FEIS. When FAA supplements a FEIS, the responsible FAA official must ensure the supplement undergoes the same review process used for the FEIS.

d. A summary of information needed to address resources protected under special purpose laws or airport legislation. Summarize the information the FEIS contains to address affected resources that special purpose laws or airport legislation protect. Refer to paragraphs 1203 to 1209 of this Order for the environmental determinations and certifications the ROD must contain to comply with 49 USC 47106.(c). This information helps ensure the approving FAA official will include special conditions in unconditional ALP approval letters or grant assurances necessary to protect environmental resources certain approved airport actions would affect.

e. A summary of mitigation measures in the approved FEIS. The ROD must summarize all environmental impacts the FEIS discusses and the mitigation measures under the respective regulatory jurisdictions of various agencies that have reviewed the proposed action. The ROD must also state if FAA has adopted all practicable means to avoid or minimize the preferred alternative's environmental harm and, if not, why (40 CFR 1505.2(c)).

f. Changes to mitigation in the approved FEIS. If FAA changes or deletes any mitigation the approved FEIS contains, the responsible FAA official must review those changes. The responsible FAA official must present the changes to the approving FAA official for consideration. When the approving FAA official changes or deletes mitigation measures, the ROD must clearly explain the official's reasons for doing so. This ensures the administrative record describes why the approving FAA official decided the changes were necessary, and who is responsible for carrying out the new or modified mitigation.

g. Completing required mitigation. FAA must ensure the mitigation requirements in a ROD are monitored and completed. The EMS is also 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*. To ensure the airport sponsor knows it is responsible for carrying out most mitigation, the approving FAA official should include special conditions in legal documents authorizing an airport development project or airport action. Those documents may be grants, unconditional ALP approvals, property conveyances, deeds, releases, other approvals, or contract plans and specifications.

When preparing special environmental assurances for these documents, the approving FAA official must:

- (1) Include actions or commitments critical to FAA's decision that the airport sponsor must implement.
- (2) Include substantial measures to mitigate adverse impacts.
- (3) Include actions the sponsor must take to identify mitigating measures or to encourage others to take those measures.
- (4) Decide if an airport sponsor, to the extent reasonable, has included or will include actions to promote land uses in or next to the airport that are compatible with normal airport operations.
- (5) Not include in grant agreements standard items that project plans and specifications incorporate.
- (6) Ensure grant assurances do not reduce aviation safety.

h. Other information. Provide a line for the approving FAA official's signature. Include that official's title, address, and telephone number.

1302. ROD SIGNATORY.

a. General. Normally, a proposed airport action involves more than one FAA program office. Therefore, the Regional Administrator will sign the ROD. When the Office of Airports is the only FAA program office responsible for a proposed airport action, the Airports Division manager would sign the ROD (see Paragraph 7.s of FAA Order 1100.154A, *Delegation of Authority*).

b. Regional Airports Division Manager duties. The regional Airports Division Manager responsible for an airport action determines if a ROD requires a Regional Administrator's signature. This manager is responsible for ensuring the appropriate coordination with other affected FAA program offices has occurred before presenting the ROD to the Regional Administrator for signature.

(1) Normally, the responsible FAA official will request that the respective FAA division manager or a manager of an FAA organization involved in the action (other than the Airports Division) and the Regional Counsel initial a grid copy of the ROD, but this may vary by region. The process is needed to ensure that those respective FAA division managers agree with the decision and that Regional Counsel has completed its legal review of the ROD.

(2) The Airport Division Manager must obtain these concurrences and initial the grid before the Regional Administrator signs the ROD.

1303. ISSUING THE ROD. The approving FAA official cannot issue the ROD until a minimum of 30 days have elapsed from the date EPA publishes the FEIS's "Notice of Availability" in the *Federal Register* (40 CFR 1506.10(b)(2)). The official may issue the ROD any time after that "wait period" ends.

a. Reducing the 30-day "wait period." EPA may reduce the 30-day "wait period," if FAA shows compelling reasons of national policy to do so (40 CFR 1506.10(d)).

b. Extending the 30-day "wait period." 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)).

1304. ROD PUBLIC AVAILABILITY. CEQ regulations do not require Federal agencies to publish RODs, unless a ROD addresses issues of national concern. But to keep the public informed about Federal decisions having environmental impacts, CEQ urges agencies to publish a notice of a ROD's availability in the *Federal Register*. ARP agrees with CEQ's suggestion because it is a way to inform the public about ARP decisions on major airport actions having significant environmental impacts. Therefore, the responsible FAA official should publish a notice of ROD availability in the *Federal Register* within 30 days of ROD approval.

1305. - 1399. RESERVED.