ORDER

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

1050.1D

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SUBJ: POLICIES AND PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

December 5, 1986

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

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FOREWORD

This order establishes policy and procedure and assigns responsibility for assuring agency compliance with environmental procedures as set forth in the Council on Environmental Quality (CEQ) regulation for implementing the procedural provisions of the National Environmental Policy Act (NEPA).

J. Lynn Helms
Administrator

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CHAPTER 1. GENERAL REQUIREMENTS

1. PURPOSE. This order establishes Federal Aviation Administration (FAA) policies and procedures for the preparation of Environmental Impact Statements (EISs) and Findings of No Significant Impact (FONSIs) and for preparing and processing environmental assessments of FAA actions. This order implements the National Environmental Policy Act of 1969 (NEPA), Order DOT 5610.1C, Procedures for Considering Environmental Impacts, and 27 other statutes, directives and orders. The complete list is given in paragraph 7 of this order.

2. DISTRIBUTION. This order is distributed to the director level in Washington with a branch level distribution in Aviation Standards, the Office of Airport Planning and Programming, the Air Traffic Service, Program Engineering and Maintenance Service, Systems Engineering Service, Logistics, and the Office of Environment and Energy; to the director level in the regions with a branch level distribution in the Airports, Air Traffic, Airway Facilities, Flight Standards, and Logistics Divisions; to the director level in the overseas area offices; a limited distribution to field offices and facilities.

3. CANCELLATION. Order 1050.1C, Policies and Procedures for Considering Environmental Impacts is canceled.

4. EXPLANATION OF CHANGES.

a. This order implements DOT Order 5610.1C, Change 1. In doing so, Order 1050.1C, paragraphs 377 and 378 are eliminated because concurrence of the Assistant Secretary for Policy and International Affairs (P-1) is no longer required. Paragraph 81 of this order states that for highly controversial final EISs, P-1 and the Office of the General Counsel (C-1) will be provided a copy of the summary section contained in the final EIS. P-1 and C-1 will also be given at least 2 weeks notice before approval of the final EIS.

b. Paragraph 27 of this order is based on DOT's regulations implementing E.O. 12372, "Intergovernmental Review of Federal Programs," which replaces paragraph 212 on A-95 Review in Order 1050.1C.

c. Paragraph 401, "Quarterly Lists of Environmental Information" is no longer needed since CEQ removed the requirement.

d. An overview of environmental actions is explained by a flow chart in Attachment 1.

e. This order has been reorganized to place all the specifics of the environmental analyses procedures for environmental documents in Attachment 2.

f. Service Appendices 1-7 have been updated. Also, the Office of Airport Planning and Programming has its own environmental handbook, Order 5050.4, which is consistent with Federal environmental procedures contained in this order. Appendix 6 refers Airports personnel to that order.

5. DEFINITIONS.

a. Council on Environmental Quality (CEQ) Terminology. CEQ terminology implementing the National Environmental Policy Act of 1969 (NEPA) was published in their regulation. CEQ sec. 1508.1 states "The terminology of this part shall be uniform throughout the Federal Government."

b. Federal Aviation Administration (FAA) Terms. Order 1000.15A, FAA Glossary, dated December 18, 1975, contains terms which recur most often in agency communications.

c. Environmental Assessment (EA). CEQ sec. 1508.9 states an "Environmental Assessment: (a) Means a concise public document for which a Federal agency is responsible that serves to: (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a findings of no significant impact. (2) Aid an agency's compliance with the Act when no environmental impact statement is necessary. (3) Facilitate preparation of a statement when one is necessary. (b) Shall include brief discussions of the need for the proposal of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted."

d. Environmental Impact Statement. CEQ Section 1508.11 states "Environmental Impact Statement means a detailed written statement as required by Section 102(2)(C) of the Act."

e. Draft Environmental Impact Statement (DEIS) is the document that reflects FAA's initial evaluation of the environmental impact of a proposed action. The agency makes its own evaluation and assumes responsibility for the DEIS. It is distributed by FAA to the EPA and other appropriate Federal, State, and local agencies for comment and is made available to teh public.

f. Final Environmental Impact Statement is the document that reflects FAA's final evaluation of the environmental impact of a proposed action. Reports cited as references in the statement need not be included in the documentation. This EIS shall accompany the proposed action through the Federal decisionmaking process.

g. Findings of No Significant Impact (FONSI) means "a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference" - CEQ sec. 1508.13.

h. Noise Sensitive Area. An area in which aircraft noise may interfere with the normal activities associated with use of the land. Noise sensitive areas may include residential neighborhoods, educational, health, and religious structures and sites and outdoor recreational, cultural, and historic sites. Whether noise interfers with a particular use depends upon the level of noise exposure received and the type of activities involved. A site which is unacceptable for outside use may be acceptable for use inside a structure, if adequate noise attenuation features are built into that structure. (Reference Attachment 2, Section 1 - Noise Analysis).

i. Record of Decision (ROD) is "a concise public record of decision." See CEQ sec. 1505.2 and 1506.1 for requirements.

* j. Responsible Official is an FAA employee designated with overall responsibility to furnish guidance and participate in the preparation of environmental impact statements, to independently evaluate the statements prior to approval, and to take responsibility for the scope and content of the statements. This person may be authorized to evaluate and accept environmental assessments and may direct scoping activities for the FAA.

k. Sponsor is any public agency or private owner of a public use airport, as defined in the 1982 Airport Act, which applies to receive Federal financial assistance under the Act or anyone proposing an airport action for which Federal authorization is required. *

l. Scoping is "An early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." - CEQ sec. 1501.7.

m. Tiering. CEQ sec. 1508.28 states "Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(1) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(2) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

6. POLICY.

a. FAA will comply with both the procedures and the policies of the National Environmental Policy Act of 1969 (hereafter NEPA) and related orders, statutes, and regulations. This requires that the FAA decisionmaking process facilitate public understanding and scrutiny by including a consideration of: the effects of the proposed actions and the alternatives; the avoidance or minimization of adverse effects of proposed actions; the restoration and enhancement of resources and environmental quality of the nation. The FAA shall integrate these NEPA considerations as early in the agency planning processes as possible.

b. The environmental review process outlined in this order shall be the focal point to assure that NEPA considerations are taken into account. Environmental Impact Statements (EISs) and Findings of No Significant Impact (FONSIs) service to document compliance with these considerations and to reflect a thorough review of all relevant environmental factors, utilizing a systematic, interdisciplinary approach.

c. These policies are supplementary to other agency policies established under other statutes and directives.

7. REGULATORY ACTIONS. This order implements agency actions required by the statutes and directives (as amended) as follows:

a. NEPA (P.L. 91-190, 42 U.S.C. 4321) establishes a broad national policy to improve the relationship between humans and their environment, and sets out policies and goals to ensure that environmental considerations are given careful attention and appropriate weight in all decisions of the Federal Government.

b. The Clean Air Act as amended by P.L. 91-604 provides that the Administrator shall review and comment in writing on the air quality impacts of actions taken under his cognizance.

c. The Noise Control Act of 1972 (P.L. 92-574, 42 U.S.C. 4901) provides for Environmental Protection Agency (EPA) consultation on noise standards and also permits EPA to propose aviation noise regulations to the FAA.

* d. The Airport and Airway Improvement Act of 1982 (Known as the 1982 Airport Act) P.L. 97-248, 49 U.S.C. 2201 et. seq.

* e. Section 4(f) of the Department of Transportation Act of 1966 (recodified at 49 U.S.C. 303) states, "The Secretary may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance or land of an historic site ... only if (1) there is no prudent and feasible alternative to using that land, and (2) the program or project includes all possible planning to minimize harm to the park, recreational area, wildlife and waterfowl refuge, or historic site resulting from the use." *

f. Section 106 of the National Historic Preservation Act of 1966 (P.L. 89-665 hereinafter, the Historic Preservation Act, 16 U.S.C. 470(f)) requires the head of any Federal agency having jurisdiction over a Federal or Federally-assisted undertaking to take into account, prior to approving the undertaking, its effect on any district, site, building, structure, or object that is included in or eligible for the National Register of Historic Places, and to give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

g. The Archaeological and Historic Data Preservation Act of 1974 (P.L. 86-253, as amended by P.L. 93-291, 16 U.S.C. 469) is directed to the preservation of historic and archaeological data that would otherwise be lost as a result of Federal construction or other Federally licensed or funded activities.

h. The Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 as amended) and Interagency Cooperation Regulation (50 CFR Part 402) require that all Federal agencies shall, in consultation with the Secretaries of Interior and Commerce. carry out programs for the conservation of endangered or threatened species listed by the Department of the Interior and ensure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of the endangered species or result in the destruction or modification of the habitat of such species to an extent which is determined by the Secretary (of the Interior or Commerce) to be critical.

i. Section 2 of the Fish and Wildlife Coordination Act (P.L. 85-624, 16 U.S.C. §§ 661, 664 note, 1008 note) requires, with certain limited exceptions, that "whenever the waters of any stream or other body of water are proposed or authorized to be . . . impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever . . . by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency shall first consult with the United States Fish and Wildlife Service, Department of the Interior, and with the head of the agency exercising administration over the wildlife resources of the particular State wherein the . . . control facility is to be constructed ..." (Subsection (2)).

j. Section 404 of the Federal Water Pollution Control Act Amendments for 1972 (P.L. 92-500, 33 U.S.C. 1344), as amended by the Clean Water Act of 1977 (P.L. 95-217, 33 U.S.C. 1251) establishes a permit procedure for activities involving dredging and filling of navigable waters. The Secretary of the Army, acting through the Army Corps of Engineers, is responsible for issuing such permits.

k. The Coastal Zone Management Act of 1972 (P.L. 92-583, 16 U.S.C. §§ 1451-1464) states that "it is national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone . . ." (Section 303), and requires all Federal or Federally supported activities affecting the zone to be carried out in a

manner consistent with State coastal zone management programs (Section 307). Federal Consistency with Approved Coastal Management Programs (15 CFR Part 930) establishes procedures for determining consistency.

l. Coastal Barrier Resources Act of 1982 (P.L. 97-348, 16 U.S.C. 3501-3510) restricts future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers by establishing a Coastal Barrier Resources System consisting of undeveloped coastal barriers along the Atlantic and Gulf coasts.

m. Section 2 of the Water Bank Act (P.L. 91-559, 16 U.S.C. § 1301 note) declares that "... it is in the public interest to preserve, restore, and improve the wetlands of the Nation ..."

n. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-528, 42 U.S.C. 4601) requires consideration of the costs and impacts of residential dislocations in judging alternatives in the acquisition of real property.

* o. Farmland Protection Policy Act (P.L. 97-98 and 7 CFR Part 658) establishes criteria for identifying and considering the effects of Federal programs on the conversion of farmland to nonagricultural uses and identifying technical assistance to agencies of Federal, state, and local governments that will be provided by the Department of Agriculture. *

p. Section 201(a) of the Federal Land Policy and Management Act of 1976 (P.L. 94-579, 43 U.S.C. 1701 et. seq.) requires Federal agencies to consult the Bureau of Land Management to determine if land to be used for a Federal action is land which is being considered for inclusion in the National Wilderness System.

* q. Resource Conservation and Recovery Act of 1976 (P.L. 94-580, 42 U.S.C. 6901 et. seq.), as amended by the Solid Waste Disposal Act of 1980 (P.L. 96-482); and the 1984 Hazardous and Solid Waste Amendments (P.L. 98-616) provide environmental requirements in handling solid and hazardous waste disposals. RCRA directed EPA to promulgate regulations to protect human health and the environment from improper management of both hazardous (Subtitle C) and nonhazardous wastes (Subtitle D). As specified by RCRA, "solid" wastes may be solid, liquid, or gaseous, or any variation of the physical state; however, not all solid wastes are hazardous wastes. Hazardous wastes are defined by the degree or ignitability, corrosivity, reactivity and/or toxicity. Also, RCRA was enacted to give EPA authority to regulate the generation, transport, and disposal of hazardous wastes, not simply their disposal.

r. 40 CFR Parts 1500-1508 (43 FR 55978, November 29, 1978) CEQ implementation of NEPA procedural provisions establishes uniform procedures, terminology, and standards for implementing the procedural requirements of NEPA's section 102(2). *

* s. 14 CFR Part 150 (49 FR 49260, December 18, 1984), Airport Noise Compatibility Planning, prescribes requirements for airport operators who *

choose to submit noise exposure maps and to develop and submit airport noise compatibility planning programs to the FAA. This regulation implements portions of the Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 2101 et seq.). It supersedes the interim rule adopted on January 19, 1981 (46 FR 8316). The revisions reflect, in part, comments invited and received following promulgation of the interim rule.

* t. 36 CFR Part 800 (39 FR 3365, January 25, 1974, and 51 FR 31115, September 2, 1986) Protection of Historic Properties, establishes procedures to ensure that historic properties are given proper consideration in the preparation of environmental assessments or impact statements, when carrying out FAA actions. *

u. 7 CFR Part 657 (43 FR 4030, January 31, 1978), Prime and Unique Farmlands requires the responsible official to consult with the U.S. Department of Agriculture's Land Use Committee to determine whether land to be affected by agency action is prime and unique farmland.

v. Executive Order 11514, Protection and Enhancement of Environmental Quality, dated March 4, 1970, orders all Federal agencies to "initiate measures needed to direct their policies, plans, and programs so as to meet national environmental goals."

w. Executive Order 11593, Protection and Enhancement of the Cultural Environment, dated May 13, 1971, requires that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historic, architectural, or archaeological significance.

x. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979, provides pertinent environmental considerations with respect to proposed actions outside the United States, its territories and possessions.

y. Executive Order 11988, Floodplain Management 43 FR 6030 and Order DOT 5650.2, April 23, 1979, Floodplain Management and Protection link the need to protect lives and property with the need to restore and preserve natural and beneficial floodplain values. Agencies are required to make a finding that there is no practicable alternative before taking action that would encroach on a floodplain.

z. Executive Order 11990, Protection of Wetlands and Order DOT 5660.1A, Preservation of the Nation's Wetlands, dated August 24, 1978, require action to minimize the destruction, loss or degradation of wetlands and to assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, and operation of transportation facilities and projects.

aa. Executive Order 12372, Intergovernmental Review of Federal Programs, dated July 14, 1982, and 49 CFR Part 17, Intergovernmental Review of DOT Programs and Activities require Federal agencies to provide the opportunity for state and local elected officials to review and

comment on Federal actions for Federal assistance or actions affecting them. FAA shall comply with DOT procedures implementing this E.O. contained in 49 CFR Part 17.

bb. President's 1979 Environmental Message Directive on Wild and Scenic Rivers, dated August 2, 1979, directs Federal agencies to take care to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory as having potential for designation under the Wild and Scenic Rivers Act (P.L. 90-542).

cc. Order DOT 5610.1C, Procedures for Considering Environmental Impacts, (44 FR 56420, October 1, 1979), and Order DOT 5610.1C, Change 1, (7/13/82), provide guidelines for considering environmental impacts of transportation actions.

dd. Order 1053.1, Policies and Procedures for Energy Planning and Conservation, provides for assessing energy demands.

8. APPLICABILITY. The requirements in this order apply to, but are not limited to, the following: all grants, loans, contracts, leases, construction, research activities, rulemaking and regulatory actions, certifications, licensing, permits, plans submitted to the agency by state or local agencies which require FAA approval, and legislation proposed by FAA. Exceptions to these requirements are listed in paragraph 31, Categorical Exclusions.

9. POLICY, PLAN, AND PROGRAM STATEMENTS (FORMERLY "CLASS ACTIONS"). A general policy, plan, or program may be covered by a single EIS or FONSI when the environmental impacts of all related actions, alternatives thereto, and measures to mitigate adverse environmental impacts, are substantially similar. (See CEQ sec. 1508.18).

10. FAA RESPONSIBILITIES.

a. Compliance with the policies and procedures of this order is the responsibility of the regional directors for all actions originating in the regions, heads of offices and services for all actions originating at headquarters, and center directors for all actions originating at centers.

b. Heads of offices and services are responsible for revising their appendices of this order, as appropriate; providing supplemental guidelines for implementing this order in their program areas, as appropriate; consulting with and advising responsible officials on matters within their operational areas, and evaluating and appraising the activities to implement the requirements of NEPA.

c. Regional directors are responsible for preparing and filing EIS's and FONSI's as necessary and assuring appropriate internal coordination of actions that cross program lines; assigning personnel and other resources to assess and document all relevant environmental factors, including assignment of an office or officer for coordinating all NEPA related activities.

d. The Office of Environment and Energy (hereinafter AEE) is responsible for overall review of FAA's environmental policies and procedures including NEPA compliance; developing and coordinating policies and procedures under this order; assisting services in developing guidance for their program areas; consulting with and advising responsible officials in their implementation of this order; developing training programs in cooperation with the Office of Personnel and Training and the Services, and evaluating and appraising the activities to implement the requirements of NEPA.

e. The Office of the Chief Counsel (hereinafter AGC) and regional and center counsels provide legal advice to all elements of FAA regarding the legal sufficiency of environmental documents.

f. Other responsibilities regarding specific program areas are set forth in Appendices 1-7 of this order.

* 11. NEPA POINT OF CONTACT. Regional Directors shall designate an office or officer as the NEPA point of contact. The point of contact will serve as a focal point, specifically to receive and disseminate within the region NEPA-related information from Washington headquarters or outside the agency. The NEPA point of contact is not intended to replace the responsible official for specific environmental documents or otherwise change existing lines of responsibility. The region will inform AEE-1 of the name, routing symbol, and telephone number of the NEPA point of contact. *

12. INCORPORATION OF CEQ REGULATIONS. The uniform procedures, terminology, and standards adopted by the CEQ for implementation of the procedural provisions of NEPA (40 CFR Parts 1500-1508; 43 FR 230, November 29, 1978) are herewith incorporated by reference. This order furnishes additional material as explanatory guidance and as an aid to implement these regulations. (Hereinafter, references to the CEQ Regulations shall simply identify the paragraph; e.g., CEQ sec. 1508.1.)

13. CHANGES TO THIS DIRECTIVE. The Director of Environment and Energy (AEE-1) may issue changes to Chapters 1 through 10 of this order after coordinating the change with the concerned organization elements, and each office and service may issue changes to the appropriate appendix (i.e., Air Traffic for Appendix 3) after coordinating the change with the concerned organizational elements, including AEE and AGC, provided:

a. The change does not affect policy, delegation of authority, or assignment of responsibilities outside the office's or service's authority;

b. The Administrator has not specifically reserved authority to make the change; and

c. Substantial changes are not made without the concurrence of the Office of the Assistant Secretary for Policy and International Affairs

(hereinafter P-1) and the Office of the General Counsel (hereinafter C-1) and are published for comment in the Federal Register after consultation with CEQ.

14. - 15. RESERVED.

CHAPTER 2. PRELIMINARY PROCEDURES AND CONSULTATION

16. PLANNING AND DEVELOPMENT. The environmental impacts of proposed actions shall be based on appropriate environmental consideration at the systems planning level and shall be assessed and considered concurrently with initial planning, development, or site considerations.

17. INITIAL REVIEW. An environmental review will indicate whether the proposed action could significantly affect the human environment with respect to noise, land, air and water quality; whether it is located in wetlands, coastal zones, historic or archeological sites, areas inhabited by endangered species, or areas protected under DOT Section 4(f); whether the action would be highly controversial on environmental grounds. At this stage, documentation is required to alert program officers to foreseeable environmental impacts and controversies. (A proposed Federal action is considered highly controversial when the action is opposed on environmental grounds by a Federal, State, or local government agency or by a substantial number of the persons affected by such action.)

18. IDENTIFICATION OF ISSUES AND PROBLEMS. Based on the initial review described in paragraph 17, the program officer(s) shall identify issues and problems having environmental significance to Federal, State, or local officials in the performance of their duties, or to the public. Further, the program officer(s) shall determine whether such issues and problems, as they pertain to the proposed action, have been addressed already in a broad system, program, or regional assessment.

19. EARLY COORDINATION. CEQ sec. 1501.4(b) states, "The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing (environmental) assessment..." and in CEQ sec. 1506.2(b) "Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law."

20. BUDGETARY REQUIREMENTS. The Office of Budget is responsible for assuring appropriate environmental consideration and documentation at the budget stage. Criteria for environmental consideration in the Airways Facilities budget process are in Program Engineering and Maintenance Service, Appendix 1, paragraph 6. Funding requirements resulting from the implementation of this order shall be justified and requested in accordance with existing budgetary and fiscal policies.

21. RESEARCH. Criteria for environmental consideration of research activities are in Appendix 2.

22. CONSULTATION. The affected local units of Government, and pertinent Federal and State agencies should be consulted early in the process of preparing a DEIS, FONSI, or environmental assessment. Comments on the environmental impacts of the proposed action shall be considered, as appropriate, in determining whether the proposed action requires an EIS or FONSI and in preparing the DEIS or FONSI.

23. ROLE OF LEAD AND COOPERATING AGENCIES. The various roles of the lead agency are described in CEQ 1501.5 through 1501.8. CEQ 1501.5 generally describes the role of the lead agency when more than one agency is involved in an action. CEQ 1501.6 describes the relationship with cooperating agencies. CEQ 1501.7 and 1501.8 define the role of the lead agency in the scoping process and in setting time limts.

* a. Federal agencies which shall be invited by the responsible official to become cooperating agencies are those with jurisdiction by law in areas which may be affected by FAA actions or whose actions, plans, or developments may affect the proposed FAA action or limit proposed alternatives.

b. Federal agencies with special expertise may also be asked to be cooperating agencies.

c. The definition of a cooperating agency in CEQ Sec. 1508.5 also includes any "State or local agency of similar qualifications (i.e., with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal), or when the effects are on a reservation, an Indian Tribe may, by agreement with the lead agency, become a cooperating agency."

*

24. PUBLIC REQUESTS FOR FAA ACTION. When an FAA action is requested from the public there may be particular situations such as, issuance of various certificates, approval of airline operating specifications or amendments, establishment of new or revised instrument approach/departure procedures affecting noise sensitive areas, etc., which will require FAA to do an environmental assessment. Whenever this situation occurs, FAA action may be delayed unless assistance in the development of pertinent environmental data is furnished by the applicant or other interested persons.

25. USE OF CONTRACTORS. Contractor consulting services may be used to prepare environmental assessments and impact statements. They may also be used to prepare background or supplemental material and otherwise assist in preparing a draft or final environmental document for which FAA takes responsibility.

26. LAND ACQUISITION AND CONSTRUCTION OF FACILITIES. Public sponsors, other aviation agencies or private parties have the authority to acquire land or to construct facilities for operation by the FAA without prior approval by the FAA. Such action, if inconsistent with the policies of this order, could prejudice a decision by the FAA on proposed changes in an airport which would use the land thus acquired, or on request for reimbursement for the property, or construction or operation of the facility.

a. When FAA is notified or becomes aware of a possibility that such a situation may be occurring, FAA will advise the public sponsor, other aviation agency or private party that:

(1) Such actions must be consistent with pertinent environmental policy as expressed in this order.

(2) The manner in which the particular property was acquired or the facility constructed will be carefully considered by the FAA prior to approval of any future FAA action involving it.

b. FAA will give particular attention to its responsibilities under DOT Section 4(f) to insure that a special effort is made to preserve the natural beauty of countryside, public parks, and recreation lands, wildlife and waterfowl refuges, and historic sites. FAA will not approve actions requiring the use of DOT Section 4(f) properties unless there is no feasible and prudent alternative and the program includes all possible planning to minimize harm.

c. FAA also will give particular attention to actions involving properties included in or eligible for inclusion in the National Register of Historic Places and the provisions of Title VI of the Civil Rights Act of 1964 and the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970.

d. An action by a sponsor, other aviation agency or private party which has acquired land or constructed a facility for operation by FAA, but without prior approval by FAA, will be reviewed to determine whether the action was consistent with the policies of this order and has not limited full and objective consideration of alternatives.

27. INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS. In accordance with Executive Order 12372, "Intergovernmental Review of Federal Programs," Federal agencies shall provide opportunities for review and comment by elected officials of State and local governments that will be affected by planned Federal assistance and direct Federal development actions. Also, FAA should provide copies of FONSIs and draft EISs to elected state and local officials. FAA shall comply with DOT procedures implementing this Executive Order contained in 49 CFR Part 17. Executive Order 12372 and DOT regulations are intended to replace the intergovernmental consultation system developed under the Office of Management and Budget (OMB) Circular A-95. Under Executive Order 12372 State and local elected officials, not the Federal government, will determine what Federal programs and activities to review and the procedures by which the review will take place.

28. PUBLIC HEARING.

a. The following elements are to be considered in deciding whether a public hearing is appropriate in cases where it is not statutorily mandated.

(1) The magnitude of the proposal in terms of environmental impact or controversy, economic costs, the size and location of the geographic area involved, and the uniqueness or amount of the resources to be committed.

(2) The degree of interest in the proposal, as evidenced by requests from the public of Federal, State, and local authorities that a hearing be held.

(3) The complexity of the issue and the likelihood that information presented at the hearing will be of assistance to the agency in fulfilling its responsibilities.

(4) The extent to which public involvement already has been achieved through other means, such as earlier public hearings, meetings with citizen representatives, or written comments on the proposed action.

b. The following shall be included in the notice for a public hearing:

(1) A description of the proposed action.

(2) The scheduling of the public hearing (time, date, and place).

(3) The availability and location of a DEIS, FONSI, or environmental assessment.

c. Notice of the hearing shall be in an areawide or local newspaper of general circulation. In CEQ sec. 1506.6 states that, "In all cases the agency shall mail notice to those who have requested it on an individual action. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter . . ."

d. A draft EIS, FONSI, or environmental assessment shall be available to the public 30 days prior to the public hearing.

e. For FAA hearings, the responsible official may assign program officers the responsibility for convening a hearing and serving as hearing officer.

f. Records of public hearings will be maintained in the docket of the General Counsel's office.

29. CITIZEN INVOLVEMENT. Citizen involvement, where appropriate, shall be initiated at the earliest practical time and continued throughout the development of the proposed project in order to obtain meaningful input. Such citizen involvement may be appropriate in defining the scope of work of an environmental assessment developed by an applicant for aid or by a consultant, or of a DEIS being developed by FAA. Comments from individuals and groups shall be considered in preparing an EIS or FONSI. A summary of citizen involvement and the environmental issues raised shall be documented where practical in the EIS or FONSI. Reference FAA Report FAA-EE-79-06, "Community Involvement Manual" for further information. A copy of FAA-EE-79-06 can be obtained from the Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

30. RESERVED.

CHAPTER 3. ENVIRONMENTAL ACTIONS

31. CATEGORICAL EXCLUSIONS.

a. Categorical Exclusions from the Requirement for an EIS or FONSI.

(1) Administrative and operating actions, such as procurements, organizational changes, personnel actions, and legislative proposals not originating in FAA.

(2) Emergency measures regarding air or ground safety.

(3) Planning grants which do not imply a project commitment.

(4) Project amendments (e.g., increases in costs) which do not alter the environmental impact of the action.

(5) Policy and planning documents not intended for or which do not cause direct implementation of project or system actions.

(6) Agreements with foreign governments, international organizations, or U.S. Government departments calling for the provision of technical assistance, advice or services in foreign countries, such as votes or other similar actions in international conferences and organizations.

(7) The planning and development of projects and programs leading to Aeromedical Applications and Standards; personnel efficiency and performance.

(8) The approval or issuance of certificates covering medicals for airmen, delegated authority, ground schools, out-of-agency training, and aircraft repair or maintenance not affecting noise, emissions, or wastes.

(9) All facility decommissionings unless an extraordinary environmental circumstance exists.

(10) Take over of non-Federal facilities by the FAA.

(11) In addition to the exceptions noted above, each of the Service Appendices may provide for categorical exclusions of specific types of projects or categories of actions carried out by that service (see CEQ sec. 1508.4 for requirements).

b. Documentation. Categorical exclusions from this order and actions for which final EISs including any Record of Decision have been filed do not require further documentation. Program FONSIs also do not require further documentation.

c. An action which has been categorically excluded in this order but which in a particular case significantly affects the quality of the human environment, requires the preparation of an EIS.

32. EXTRAORDINARY CIRCUMSTANCES. Proposed Federal actions, normally categorically excluded, which have any of the following characteristics shall be the subject of an environmental assessment.

a. An action that is likely to have an effect that is not minimal on properties protected under section 106 of the Historic Preservation Act of 1966, as amended, or section 4(f).

b. An action that is likely to be highly controversial on environmental grounds.

c. An action that is likely to have a significant impact on natural, ecological, cultural, or scenic resources of national, state, or local significance, including endangered species, wetlands, floodplains, coastal zones, prime, unique or state or local important farmlands, energy supply and natural resources, or resources protected by the Fish and Wildlife Coordination Act.

d. An action that is likely to be highly controversial with respect to the availability of adequate relocation housing. In an action involving relocation of persons or businesses, a controversy over the amount of the acquisition or relocation payments is not considered to be a controversy with respect to availability of adequate relocation housing.

e. An action that is likely to:

(1) Cause substantial division or disruption of an established community, or disrupt orderly, planned development, or is likely to be not reasonably consistent with plans or goals that have been adopted by the community in which the project is located; or

(2) Cause a significant increase in surface traffic congestion.

f. An action that is likely to:

(1) Have a significant impact on noise levels of noise sensitive areas.

(2) Have a significant impact on air quality or violate the local, state, or Federal standards for air quality.

(3) Have a significant impact on water quality or contaminate a public water supply system.

(4) Be inconsistent with any Federal, State, or local law or administrative determination relating to the environment.

g. Other action that is likely to directly or indirectly affect human beings by creating a significant impact on the environment.

33. ADVISORY ACTIONS. Some Federal actions, such as airspace determinations are of an advisory nature and are neither permissive nor enabling. Actions of this type are not major Federal actions, and environmental assessments or statements are not required as a condition for accomplishing the action. If it is known or anticipated that some subsequent Federal action would require processing in accordance with environmental procedures, the FAA shall so indicate in the advisory action.

34. CUMULATIVE IMPACT. In determining whether an environmental impact statement is required for a proposed Federal action, it is necessary to consider the overall cumulative impact of the proposed action and the consequences of subsequent related actions. CEQ sec. 1508.7 states that "'Cumulative impact' is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (See paragraph 37(b))

35. ENVIRONMENTAL ASSESSMENT. An environmental assessment (EA) is a concise document describing the environmental impacts of a proposed action and its alternatives. If a decision has not been made to prepare an EIS and a proposed action has not been classified as a categorical exclusion, an EA shall be prepared. If it is concluded from the EA that the proposed action is a major impact significantly affecting the quality of the human environment, the responsible official shall prepare and process a draft EIS. If it is concluded that the action is not a major impact significantly affecting the quality of the human environment, the responsible official shall prepare and file a FONSI. It is FAA's intention to adhere strongly to this instruction and to require only enough analysis in the environmental assessment for the following purposes:

a. To understand the problem and identify reasonable alternative solutions, including the proposed action. The CEQ Regulations include specific directions on the consideration of alternatives. While these directions are concerned with the EIS, they are also applicable to an EA, although less detail than in an EIS. See paragraph 64 on Alternatives for the applicable CEQ sections.

b. To determine whether any potential impacts are significant, which would trigger the environmental impact statement process.

c. To provide the basis for the FAA's findings of no significant impact if the proposed action has no significant impacts.

d. To identify and satisfy special purpose Federal laws, regulations, and executive orders.

e. To identify and satisfy State and local laws and regulations applicable to the proposal.

f. In completing the above, to indicate agencies consulted (and to identify cooperating agencies for environmental impact statement preparation purpose).

36. CONTENT OF ENVIRONMENTAL ASSESSMENT. The environmental assessment shall incorporate some selected items of information required for an environmental impact statement in CEQ sec. 1502.10. The information in the environmental assessment will, however, be in more abbreviated form than in an environmental impact statement. The information required includes the purpose and need for the proposal, alternatives including proposed action (see paragraph 64), Affected Environment (see para. 65), Environmental Consequences (see paragraph 66 and Attachment 2 for applicable potential impact areas), listing of agencies and persons consulted and appendices (if any).

37. ACTIONS REQUIRING ENVIRONMENTAL IMPACT STATEMENTS.

a. After an EA has been prepared, an EIS shall be prepared if an FAA action:

(1) Has an effect that is not minimal on properties protected under Section 4(f) of the DOT Act, or Section 106 of the Historic Preservation Act.

(2) Has a significant impact on natural, ecological, cultural, or scenic resources of National, State, or local significance, including endangered species or wetlands, floodplains, and coastal zones.

(3) Is highly controversial with respect to the availability of adequate relocation housing. (A controversy over the amount of acquisition or relocation payments is not a controversy with respect to the availability of relocation housing).

(4) Causes substantial division or disruption of an established community, or disrupts orderly, planned development, or is determined not to be reasonably consistent with plans or goals that have been adopted by the community in which the project is located.

(5) Causes a significant increase in surface traffic congestion.

(6) Has a significant impact on noise levels of noise sensitive areas.

(7) Has a significant impact on air quality or violates the standards for air quality of the Environmental Protection Agency or an affected locality or State.

(8) Has a significant impact on water quality or may contaminate a public water supply system.

(9) Is inconsistent with an Federal, State, or local law or determination relating to the environment.

(10) Directly or indirectly affects human beings by creating a significant impact on the environment.

(11) Has a significant impact on prime or unique farmlands or farmlands of state or local importance.

b. An EIS is required not only when the impact of the proposed project itself is significant, but also when the cumulative impact of the proposed project and other past, present and reasonably foreseeable future actions is significant. A series of actions considered on an individual bases may have a limited environmental impact, yet, when considered together, may have a significant, cumulative impact.

(1) If approval of the proposed action would permit further contemplated actions, the impacts of those contemplated actions and the proposed action must both be considered in determining whether to prepare an EIS.

(2) The actions which are related to the proposed action may be undertaken by any Federal or non-Federal agency or person.

(3) If an EIS is required because of the cumulative impact of the proposed action and future, related actions, no commitment may be made with respect to the future actions prior to the processing of the EIS if such commitment would foreclose or limit the choice of alternatives or mitigating measures which may be taken. (See CEQ sec. 1506.1).

c. In case of doubt as to whether an EIS is necessary for a particular action, the responsible official or program officer should consult with AEE-1 and AGC-1. Regional Airport Divisions consultation under Order 5050.4 should be with APP-600.

38. OVERVIEW OF ENVIRONMENTAL ACTIONS.

a. The process for consideration of the environmental effects of a proposed action involves a number of steps, beginning with assessment by the FAA or applicant of actions not categorically excluded. The relative responsibilities of the FAA are summarized in the following paragraphs.

b. For a better understanding of the process, a flow chart (Attachment 1) is presented at the end of this order. Attachment 1 is broken down into four sheets:

(1) Sheet 1 depicts the initial FAA review of actions not categorically excluded. The FAA must determine, based on the environmental assessment review, whether the action requires preparation of a FONSI or an EIS.

(2) Sheet 2 describes the process if it is determined that an EIS is not necessary. It shows the procedure for the processing and approval of a FONSI.

(3) Sheet 3 describes the FAA procedure in processing a draft EIS in accordance with NEPA 102(2)(C). It outlines the process of scoping, preparing and circulating the draft, and receiving and reviewing comments.

(4) Sheet 4 explains FAA's approval process for a final EIS.

39. RESERVED.

CHAPTER 4. FINDINGS OF NO SIGNIFICANT IMPACT

40. GENERAL. CEQ sec. 1501.4(e) provides that the Federal agency shall "Prepare a findings of no significant impact (CEQ sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement." CEQ sec. 1508.13 defines a findings of no significant impact as "... a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (CEQ sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared." The FAA shall evaluate the environmental assessment to determine if an alternative which provides a good solution to the problem has no significant impacts. Unless there is an overriding reason for not selecting such an alternative, the FAA shall then proceed with the preparation of a findings of no significant impact.

41. SCOPE OF DOCUMENTATION.

a. The FONSI may be attached to an EA or the EA and FONSI may be combined into a single document.

b. Depending on the complexity and degree of impact of a proposed action, a FONSI may range in content from a simple conclusion, supported with pertinent facts, that the action is not a major impact significantly affecting the quality of the human environment, to an analysis involving the format and content necessary for environmental statements.

c. The FONSI shall include a brief description of the proposed action and its purpose.

d. The FONSI shall assess and document all relevant matters necessary to support the conclusion that the action is not a major impact significantly affecting the quality of the human environment. The attention given to different environmental factors will vary according to the nature, scale, and location of the proposed action. The FONSI shall include any measures to minimize adverse impacts on the environment.

e. The FONSI shall identify and discuss the alternatives considered, particularly those which mitigate environmental impacts, including the alternative of no action.

f. The FONSI shall determine the proposed action's consistency or inconsistency with community planning, and shall document the basis for the determination.

g. If the FONSI includes a Section 4(f) determination, it shall also include the material called for in DOT Order 5610.1C. AGC, or a designee, shall review the Section 4(f) determination for legal sufficiency. The document must reflect consultation with the Department of the Interior and, where appropriate, the Department of Agriculture or the Department of Housing and Urban Development.

h. Where a Federal action affects wetlands, the FONSI shall document the opportunity for early public review, the agency's conclusion that there is no practicable alternative to the proposed action, and that the proposed action includes all practicable measures to minimize harm. The FONSI shall document the outcome of consultations with the U.S. Fish and Wildlife Service and the pertinent State resources agency.

i. Where affected properties are included in or eligible for inclusion in the National Register of Historic Places, the FONSI shall include documentation and outcome of consultations with the State Historic Preservation Office and evidence that the Advisory Council on Historic Preservation reviewed the determination of no adverse effect.

j. Where Federally assisted activities affect the coastal zone in a state with an approved coastal management program, the FONSI should reflect FAA's views on the relationship to the approved coastal zone management program and the state's determination of the proposal's consistency with the program.

k. Where an action affects prime or unique farmlands or farmlands of state or local importance, the FONSI shall document coordination with the U.S. Department of Agriculture.

42. RESPONSIBLE OFFICIALS.

a. At the field level, FONSIs shall be reviewed by pertinent staff and program offices and may be approved by the Regional or Center Director or their designees.

b. Responsible officials shall send FONSIs originating in FAA headquarters to AEE-1 and to AGC-1 for review. After review for legal sufficiency by AGC, the Service or Office Director may sign the FONSI.

43. COORDINATION. Usually FONSIs are required to be coordinated outside of the FAA only where coordination is required by law or administrative directive (e.g., actions involving a section 404 permit, (with Corps of Engineers, EPA and FWS), Section 4(f) of the DOT Act, Section 106 of the Historic Preservation Act, Section 7 of the Endangered Species Act, or wetlands impact).

44. DISTRIBUTION. A copy of the FONSI is filed in the office of the responsible official and a copy forwarded to the appropriate Service or Office Director for review for consistency with the policy and procedures of this order. Service Directors may waive this requirement, subject to AEE-1 concurrence. AEE maintains the FAA-wide files of FONSIs and EISs and should receive one copy of each.

45. AVAILABILITY FOR PUBLIC INFORMATION. FONSIs are public information, and shall be made available upon request pursuant to FAA procedures. State and local officials designated by the Intergovernmental Review Plan for the state should be notified of the availability of the FONSI. For actions with effects primarily of local concern, this complies with the public notice requirement of CEQ sec. 1506.6(b)(3)(i). For actions with effects of national concern, the notice shall include publication in the Federal Register and notice by mail to national organizations interested in the matter. In certain limited circumstances FONSIs will be made available, through such state and local officials, for public review for 30 days before the agency makes it final determination whether to prepare an EIS and before the action may begin. These circumstances include situations where the proposed action is similar to that requiring an EIS or where the proposed action is unprecedented. (See CEQ sec. 1501.4(c)(2)).

46. APPROVAL. The Federal approval shall include the following:

"After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of the National Environmental Policy Act of 1969 (NEPA) and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(C) of NEPA.

APPROVED: _____ DATE: _____

DISAPPROVED: _____ DATE: _____"

47. RESERVED.

CHAPTER 5. PREPARATION OF DRAFT ENVIRONMENTAL IMPACT STATEMENTS OR FINDINGS OF NO SIGNIFICANT IMPACT

48. TIMING OF DRAFT STATEMENT PREPARATION. DEISs and FONSIs shall be prepared at the earliest practical time prior to the first significant decision point in the program or project development process.

49. APPLICATIONS. The program officer may require each applicant for a grant, loan, permit, or other approval to which this order applies, to submit, with the original application, an environmental assessment. Regardless of the nature of participation, responsible officials or program officers must furnish guidance, actively participate in preparing the DEIS, EIS, and FONSI, and make their own evaluation prior to approval. The responsible official shall take responsibility for the scope and content of an EIS or FONSI. The responsible official shall appropriately limit the actions an applicant may take prior to completion and approval of EISs and subsequent approval of the application. (CEQ sec. 1506.1)

50. NOTICE OF INTENT TO PREPARE AN EIS.

a. The first step is described in CEQ sec. 1501.7 as follows: "As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (CEQ sec. 1508.22) in the FEDERAL REGISTER ..." This procedure is accomplished by the responsible official sending the notice of intent through AGC-204 with a copy to AEE-1.

b. The notice of intent in CEQ sec. 1508.22 "...means a notice that an environmental impact statement will be prepared and considered." The notice shall briefly:

"(1) Describe the proposed action and possible alternatives."

"(2) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held."

"(3) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement."

c. Delay. If for some reason there is a lengthy period between the time a decision is made to prepare an environmental impact statement and the actual preparation, CEQ sec. 1507.3(e) provides that "... the notice of intent ... may be published at a reasonable time in advance of preparation of the draft statement."

51. SCOPING.

a. Scoping is an important and early integral part of the EIS process. (See CEQ sec. 1501.7). This section provides that "There shall be an early and open process for determining the scope of issues to be

addressed and for identifying the significant issues related to a proposed action." The responsible official must take the lead in the scoping process, including issuance of the notice of intent, inviting the participation of other agencies, determing the issues to be analyzed in depth, and assigning responsibilities for inputs to the environmental impact statement. Scoping, however, is not required if it has been determined that an EIS is not required.

b. CEQ sec. 1501.7(b)(4) states that an agency may "hold an early scoping meeting or meetings, which may be integrated with any other early planning meetings the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites." However, there is no requirement for a scoping meeting, per se, on every project requiring an environmental impact statement. Depending on the nature and complexity or the project, some of all of the information needed during the scoping process may be obtained by letter or telephone.

c. CEQ sec. 1501.7 further provides that the lead agency shall "Determine the scope (CEQ sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement." Scope as defined in CEQ sec. 1508.25 "... consists of the range of actions, alternatives, and impacts to be considered ..." To determine the range of actions, the problems as described in the environmental assessment should be carefully reviewed. The proposed action and any action functionally related to it should be clearly understood. Alternatives should be reviewed in this context, identifying those which need to be rigorously explored and objectively evaluated as well as those which can be eliminated (CEQ sec. 1502.14(a)). Those impact categories which fall below the threshold of significant in the environmental assessment normally do not need further study or description in the environmental impact statement. Establishing a clear definition of the Federal action, the alternatives, and the impact needing detailed study (as well as those which do not) early in the scoping process should help considerably in managing the environmental impact statement preparation process.

52. USE OF CONTRACTORS IN PREPARATION OF AN EIS.

a. CEQ Sec. 1506.5(c) provides that "any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under CEQ sec. 1501.6(b), a cooperating agency."

b. Contractor Preparation. Where a contractor prepares an environmental impact statement, CEQ sec. 1506.5(c) requires that "Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency (for its portion), specifying that they have no financial or other interest in the outcome of the project." Furthermore, "... the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents."

53. INCORPORATION BY REFERENCE. CEQ sec. 1502.21 states that: "Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference."

54. INCLUSION OF ENVIRONMENTAL DETERMINATIONS. EIS or FONSIs shall include relevant documentation for environmental determinations under Section 4(f) of the DOT Act and other environmental findings and determinations."

55. INTERDISCIPLINARY APPROACH. CEQ sec. 102(2)(A) of NEPA requires each Federal agency to apply a systematic, interdisciplinary approach in planning and decisionmaking which may impact the environment. (See CEQ sec. 1502.6.) To assure that all environmental impacts are identified and assessed, all relevant disciplines should be represented. If the office or service does not contain the necessary disciplines, use of professional services available in other Federal, State, or local agencies, universities, or consulting firms is appropriate. (See paragraph 50 of this order). A listing of the preparers and their qualifications is required under paragraph 68 of this order and CEQ sec. 1502.10 and 1502.17.

56. INTERNAL REVIEW PROCESS.

a. Draft EISs and FONSIs shall be reviewed by affected FAA program divisions and staff officers at the regional or office level prior to filing for public review. DOT Act Section 4(f) determinations are subject to review as stated in Attachment 2 of this order. This internal review is to assure that related foreseeable agency actions by other FAA elements are properly covered in the statement or finding and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out.

b. Regional Directors are responsible for designating a lead division or office to carry out this internal review.

57. REGULATIONS. For regulations or rulemaking, the DEIS or FONSI shall be available to reviewing agencies and the public prior to or concurrently with the notice of proposed rulemaking.

58. LEGISLATIVE PROPOSALS.

a. Before the FAA submits to the Congress a legislative proposal, the office which originates the legislation shall prepare, circulate, and file with EPA an environmental impact statement or prepare a FONSI. (See paragraph 74 on circulation in this order).

b. The Office of the Secretary shall review legislative environmental statements and submit them to the Office of Management and Budget (OMB) for circulation in the normal legislative clearance process.

59. RESERVED.

CHAPTER 6. ENVIRONMENTAL IMPACT STATEMENT CONTENTS

60. GENERAL. Each EIS shall be prepared in accordance with Attachment 2 of DOT Order 5610.1C.

61. FORMAT. CEQ sec. 1502.10 contains a standard format, which is to be followed for environmental impact statements, as follows:

(a) Cover Sheet
(b) Summary
(c) Table of Contents
(d) Purpose and Need for the Action
(e) Alternatives Including the Proposed Action
(f) Affected Environment
(g) Environmental Consequences
(h) List of Preparers
(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement are Sent
(j) Index
(k) Appendices (if any)

62. COVER SHEET AND SUMMARY.

a. The cover sheet shall include the information required in CEQ sec. 1502.11 plus a heading as follows:

"DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
Draft (or Final) Environmental Impact Statement

This statement is submitted for review pursuant to the following public law requirements: [List those applicable; e.g., section 102(2)(C) of the National Environmental Policy Act of 1969, section 4(f) of the Department of Transportation Act of 1966]."

b. The summary shall include the information required in CEQ sec. 1502.12 which states "Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

63. PURPOSE AND NEED FOR THE ACTION. CEQ sec. 1502.13 states "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

64. ALTERNATIVES (INCLUDING PROPOSED ACTION). CEQ sec. 1502.14 states that "This section is the heart of the environmental impact statement." Further, it is to be "Based on the information and analysis presented in the sections on the Affected Environment (paragraph 65) ... and the Environmental Consequences (paragraph 66) ...". The FAA responsible official shall apply the applicable CEQ sections below for EISs and in less detail for environmental assessments:

a. Section 1502.1. The environmental impact statement "...shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."

b. Section 1502.2(e). "The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker."

c. Section 1502.14. The environmental impact statement "...should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public."

d. Section 1502.14(a). Agencies shall "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated."

e. Section 1502.14(b). Agencies shall "Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits."

f. Section 1502.14(c). Agencies shall "Include reasonable alternatives not within the jurisdiction of the lead agency."

g. Section 1502.14(d). Agencies shall "Include the alternative of no action."

h. Section 1502.14(f). Agencies shall "Include appropriate mitigation measures not already included in the proposed action or alternatives."

65. AFFECTED ENVIRONMENT. The EIS shall precisely describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives (CEQ sec. 1502.15).

a. The amount of detail provided in descriptions of the affected environment shall be commensurate with the amount of information required at the particular level of decisionmaking.

b. The statement shall identify, as appropriate, population and growth characteristics of the affected area, and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives.

c. The statement shall describe other related activities (past, present or foreseeable future actions) in the area, their interrelationships, and cumulative environmental impact (See CEQ sec. 1508.7 on cumulative impact).

d. The statement shall discuss the relationship of the proposed action to adopted or proposed land use plans, policies, controls, and goals and objectives of affected communities, including communities outside the jurisdiction in which the proposed project is located. Any participated consultations, permits or authorizations required by Federal law or regulation should be identified.

66. ENVIRONMENTAL CONSEQUENCES. Per CEQ sec. 1502.16, "This section forms the scientific and analytic basis for the comparisons under CEQ sec. 1502.14 (alternatives, as described in paragraph 64). It shall consolidate the discussions of those elements required by CEQ sec. 102(2)(C)(i), (ii), (iv), (v) of NEPA which are within the scope of the statement and as much of CEQ sec. 102(2)(C)(iii) [alternatives] as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in CEQ sec. 1502.14. It shall include discussions of:

a. "Direct effects and their significance [reference CEQ sec. 1508.18 for definition of 'effects' both direct and indirect]...

b. "Indirect effects and their significance...

c. "Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See CEQ sec. 1506.2(d) [Elimination of duplication with State and local procedures].)

d. "The environmental effects of alternatives including the proposed action. The comparisons under CEQ sec. 1502.14 will be based on this discussion.

e. "Energy requirements and conservation potential of various alternatives and mitigation measures.

f. "Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

g. "Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

h. "Means to mitigate adverse environmental impacts (if not fully covered under CEQ sec. 1502.14(f))."

Specific environmental impact areas to be discussed "as much as is necessary to support the comparisons [of alternatives]" are described in Attachment 2 of this order.

67. MITIGATION MEASURES. Draft EISs should describe measures under consideration or planned to minimize harm from the proposed action. Measures which will increase the benefits of the proposed action should also be discussed. The following types of measures should be considered:

(1) Design and construction actions. These include alternative locations which avoid or reduce impacts, design measures which reduce impacts, for example, reduced scale facilities, alternative airport runway configurations, aircraft and airway technology which reduces noise, and construction of noise barriers.

(2) Management actions which reduce impacts during operation of the facility. These include aircraft operating procedures for noise abatement, maintaining open areas to enhance their usefulness as wildlife habitat.

(3) Replacement, restoration, and compensation. These measures include functional replacement of public facilities, residential or business relocation assistance, and restoration of natural areas disturbed by construction.

68. LIST OF PREPARERS. CEQ sec. 1502.17 states "The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the EIS or significant background papers, including basic components of the statement. Where possible the persons who are responsible for a particular analysis including analyses in background papers, shall be identified. Normally the list will not exceed two pages."

69.-70. RESERVED.

CHAPTER 7. PROCESSING DRAFT ENVIRONMENTAL IMPACT STATEMENTS

71. GENERAL. Environmental impact statements shall be reviewed by affected FAA program divisions and staff officers at the regional level prior to filing for public review. This internal review is to assure that related foreseeable agency actions by other FAA elements are properly covered in the draft statement and are coordinated with the appropriate action office so that commitments which are the responsibility of other divisions or offices will be carried out. For adoption of another agency's environmental impact statement, refer to CEQ sec. 1506.3.

72. PUBLIC NOTICE. Each responsible official shall assure that press releases, official notices, or other appropriate media announce to the public that a DEIS has been prepared and is being circulated and that comments on the environmental impact of the proposed action are being solicited. The announcement shall contain information on the availability of the DEIS and should be distributed to local media concurrent with distribution for notice in Federal Register; with request for immediate publication or other appropriate media coverage.

73. COPIES. The responsible official shall have printed sufficient copies of DEISs to meet anticipated demand. A fee, not to exceed reproduction costs, may be charged for copies requested by the public if the original set of copies is exhausted.

74. CIRCULATION AND AVAILABILITY OF DEIS.

a. Distribution and Coordination for Intergovernmental Review.

(1) Per CEQ sec. 1503.1, comments on the draft environmental impact statement shall be obtained from or requested of appropriate Federal, State, and local agencies.

(2) For instructions on circulation of the summary in lieu of the full environmental impact statement, see CEQ sec. 1502.19.

(3) All draft environmental impact statements will be coordinated with the appropriate regional offices of other Federal agencies having jurisdiction by law or special expertise, except that statements to be coordinated with any component of the Department of the Interior (DOI), Department of Commerce (DOC), or Department of Energy (DOE) shall be sent directly to the Washington headquarters of these departments.

b. Circulate the DEIS to agencies which have "jurisdiction by law or special expertise with respect to any environmental impact involved" or "which are authorized to develop and enforce environmental standards." In addition, provide copies to:

(1) EPA headquarters (5 copies), EPA region (5 copies), P-1 (2 copies), Office of Environment and Energy (1 copy), Office of Chief Counsel or designee (1 copy), the service director, other elements of DOT, and other FAA services as appropriate; U.S. Department of the Interior headquarters (12 copies; except for projects in North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas, 13 copies; and for Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming 14 copies); Ecology and Conservation Division of the National Oceanographic and Atmospheric Administration (1 copy); only for transportation proposals having major energy-related consequences, DOE (1 copy); and

(2) State and local agencies, including cooperating agencies, agencies that commented substantively on the Intergovernmental Review of Federal Programs, affected cities and counties, and others known to have an interest in the action. The Intergovernmental Review of Federal Programs process may be used, by mutual agreement, for securing review of DEISs by State and local agencies.

c. Availability to the Public. The draft environmental impact statement shall be made available for public review per CEQ sec. 1506.6.

d. Filing with EPA. The draft environmental impact statement shall be filed with EPA per CEQ sec. 1506.9. The EPA will subsequently publish a notice in the Federal Register per CEQ sec. 1506.10 which will begin the 90-day period after which the Federal action can be taken. Five copies of the draft statement shall be sent to: Office of Federal Activities, EIS Filing Section (A-104), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

75. COMMENTS ON THE DEIS.

a. CEQ sec. 1503 addresses specificity of comments. If the responsible official considers that the comments received from a commenting agency have not been made in accordance with the intent of this section, consultation with that agency should be undertaken to rectify discrepancies.

b. CEQ 1503.3(a) states, "Comments on the environmental impact statement or on the proposed action shall be as specific as possible and address either the adequacy of the statement or the merits of the alternatives discussed or both."

c. Comments from EPA are categorized according to the following criteria:

(1) The impact is rated by EPA as: LO (Lack of Objections), ER (Environmental Reservations), or EU (Environmentally Unsatisfactory).

(2) The statement adequacy is categorized by EPA as: 1 (Adequate), 2 (Insufficient Information), or 3 (Inadequate).

76. COMMENT PERIODS. A time period for comment may not be fewer than 45 days from publication of the notice by EPA per paragraph 74d above. Requests for reasonable extensions of time, when warranted by magnitude and complexity of the statement or the extent of citizen interest, shall be granted.

77.-79. RESERVED.

CHAPTER 8. PREPARATION, APPROVAL, AND DISTRIBUTION OF FINAL ENVIRONMENTAL IMPACT STATEMENTS

80. UTILIZATION OF COMMENTS.

a. Comments received on the DEIS and inputs (in summary form if appropriate) from citizen participation, and public hearings shall accompany the EIS through the normal internal review process.

b. In preparing an EIS the DEIS shall be revised, as appropriate, to reflect comments received, issues raised through the community involvement and public hearing process, or other considerations. An appropriate response, or reference to subject's discussion in the statement shall be made. Copies of all substantive commenting letters shall be included. If the number of comments is too voluminous to include, a summary may be prepared in accordance with CEQ sec. 1503.4(b).

c. Every effort shall be made to resolve environmental issues prior to final EIS preparation. Any unresolved environmental issues and efforts to resolve them through further consultation shall be identified and discussed. For instance, where an agency comments that the statement contains inadequate analysis or that the impacts are too adverse for approval, either the issue shall be resolved, or efforts to resolve the issue shall be documented, and any action that will result shall be noted.

d. Compliance with other Requirements. The final EIS shall reflect that there has been compliance with the requirements of all applicable environmental laws and orders, such as section 4(f) of the DOT Act. If such compliance is not possible by the time of final EIS preparation, the EIS shall reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met.

e. The final EIS must reflect mitigation measures which will be included as part of the proposed action.

81. APPROVAL OF FINAL ENVIRONMENTAL IMPACT STATEMENTS.

a. For EISs which originate at headquarters, the Office or Service Director shall send one copy of each EIS to AEE-1 and AGC-1 for review. After the Office or Service Director approves the EIS, file it with EPA. (See para. 83)

b. For EISs originating in the field, not subject to headquarters' concurrence, the Regional or Center Director shall approve and file the EIS with EPA, following review for legal sufficiency by the Regional Counsel.

c. For EISs originating in regions or centers, but when headquarters concurrence is requested, the Regional or Center Director shall approve the EIS and submit it to the appropriate service or office director. Following approval, the EIS must be filed with EPA. (See para. 83)

d. For EISs originating in regions or centers, but where authority to approve the EIS is retained in headquarters, (see FAA Order 5050.4), the region or center shall send the proposed EIS to the appropriate service or office director. The service or office shall send copies to the Office of Environment and Energy and to the Chief Counsel for review. Following approval, the EIS must be filed with EPA. (See para. 83)

e. All statements involving Section 4(f) of the DOT Act are subject to AGC review for legal sufficiency in headquarters.

f. For highly controversial final EISs requiring headquarters' review and concurrence, P-1 and C-1 shall be notified that the final EIS is under review and be provided with a copy of the summary section contained in the final EIS. P-1 and C-1 will also be given at least 2 weeks notice before approval of the final EIS.

g. Approval. After appropriate internal review, a declaration approximately as follows shall be added to the summary. Signature and date blocks shall be added for the concurrence of appropriate offices and approval or disapproval of the approving official.

> "After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisdiction by law or special expertise with respect to the environmental impacts described, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of the National Environmental Policy Act of 1969."

82. AVAILABILITY PENDING APPROVAL. In addition to the availability and distribution of approved final EISs, final statements proposed for approval shall normally be made available upon request in FAA offices for inspection by the public and Federal, State, or local agencies prior to final approval and filing with EPA. Such statements should carry a notation that they have not been approved and filed.

83. DISTRIBUTION OF APPROVED ENVIRONMENTAL IMPACT STATEMENTS. The originating FAA region, center, or service shall simultaneously distribute the EIS as follows:

a. Five copies to:

Office of Federal Activities
Environmental Protection Agency (A-104)
401 M Street, SW
Washington, DC 20460

b. Five copies to the appropriate regional office of EPA (one copy if categorized as LO-1 per paragraph 75 of this order).

c. One copy of the EIS to the Office of Environment and Energy (AEE-1) and to the Service or Office Director.

* d. One copy of the approved final EIS shall be sent to the Office of Transportation Regulatory Affairs, Environmental Division, P-14. *

e. A copy of the EIS shall also be sent to each Federal, state, and local agency, to private organizations which made substantive comments on the draft statement and to individuals who requested a copy of the final statement or who made substantive comments on the draft. DOI copies shall be sent to the Director, Environmental Project Review, U.S. Department of the Interior, Washington, D.C. 20240. DOI shall be sent seven copies for proposals in all states except that eight copies would be sent for proposals in North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas; nine for projects in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For transportation proposals having major energy-related consequences, one copy should be sent to DOE headquarters.

f. One copy to any sponsor, applicant or grantee.

g. One copy to appropriate state-designated single point of contact (or specific agency contacted when states have not designated a single contact point), unless otherwise designated by the governor.

h. Additional copies shall be sent to accessible locations to be made available to the general public, including headquarters and regional offices; state, metropolitan, and local public libraries.

i. Pursuant to CEQ sec. 1506.6, environmental statements, comments received, and underlying documents will be made available to the public without charge to the fullest extent practical or at a reduced charge which is not more than the actual cost of reproducing copies.

84. REFERRALS TO CEQ. The Council on Environmental Quality may serve as a mediator in interagency disagreements over proposed Federal actions that might cause unsatisfactory environmental effects (see CEQ sec. 1504).

a. If a commenting agency determines that an action is environmentally unsatisfactory, the matter may be referred to CEQ.

b. When the responsible official receives a notice of intended referral from the commenting agency, this official shall provide P-1 and AEE-1 with a copy of the notice.

c. In the event of referral to CEQ by a commenting agency, the responsible official shall forward a proposed response to AEE-1 within 10 days of referral. The response shall address fully the issues raised in the referral and be supported by evidence. AEE-1 shall obtain P-1's concurrence in the proposed response. The response shall be sent to CEQ within 20 days of the referral.

85.-87. RESERVED.

CHAPTER 9. TIERING, TIME LIMITATIONS, WRITTEN REEVALUATION, AND SUPPLEMENTAL ACTIONS

88. TIERING. Program offices shall, to the extent practicable, build upon broad prior assessments, whether EIS or FONSI. For example, long-term development statements and broad system, program, or regional statements may be incorporated by specific project EISs. The purpose of tiering is to eliminate repetition and allow discussion of issues at the appropriate level of detail. (See CEQ sec. 1500.4, 1502.4, 1502.20, and 1508.28.)

89. REDUCING PAPERWORK. Environmental documentation prepared under this order shall be concise and clear. Length of documentation shall be reduced by avoidance of needless detail and by other means such as setting appropriate page limits. (See CEQ sec. 1500.4.)

90. REDUCING DELAY. Environmental documentation prepared under this order shall be integrated into the decisionmaking process and shall be carried on in a timely manner. (See CEQ sec. 1500.5).

91. TIME LIMITS FOR ENVIRONMENTAL DOCUMENTS. The time limits below have been established for all DOT EISs.

a. A draft EIS may be assumed valid for a period of 3 years. If the proposed final EIS is not submitted to the approving official within 3 years from the date of the draft EIS circulation, a written reevaluation of the draft shall be prepared by the responsible Federal official to determine whether the consideration of alternatives, impacts, existing environment, and mitigation measures set forth in the draft EIS remain applicable, accurate, and valid. If there have been changes in these factors which would be significant in the consideration of the proposal, a supplement to the draft EIS or a new draft EIS shall be prepared and circulated.

b. With regard to approved final EISs, three sets of conditions have been established:

(1) If major steps toward implementation of the proposed action (such as the start of construction, substantial acquisition, or relocation activities) have not commenced within 3 years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared by the responsible Federal official (unless EIS tiering is being used). If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated.

(2) If the proposed action is to be implemented in stages or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy, and validity of the final EIS shall be made at each major approval point which occurs more than 3 years after approval of the final EIS and a new or supplemental EIS prepared, if necessary.

(3) If the proposed action has been restrained or enjoined by court order or legislative process after approval of the final EIS, the 3 year period may be extended by the time equal to the duration of the injunction, restraining order, or legislative delay.

92. WRITTEN REEVALUATION. The preparation of a new EIS or FONSI is not necessary when it can be documented that: the proposed action conforms of plans or projects for which a prior EIS or FONSI has been filed; the data and analyses contained in the previous EIS or FONSI are still substantially valid; and that all pertinent conditions and requirements of the prior approval have or will be met in the current action. This evaluation, signed by the FAA responsible official, will either conclude the contents of previously prepared environmental documents remain valid or that significant changes require the preparation of a supplement or new environmental document.

93. SUPPLEMENTAL OR AMENDED STATEMENTS. CEQ sec. 1502.9(c) states that "Agencies:

a. Shall prepare supplements to either draft or final EISs if:

(1) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

b. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

c. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

d. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council."

e. If there are compelling reasons to shorten time periods, FAA may consult with CEQ.

94. IMPLEMENTATION OF COMMITMENTS IN ENVIRONMENTAL STATEMENTS. In accordance with CEQ sec. 1505.3, "Mitigation ... and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency." This section of the CEQ Regulations further specifies actions which the lead agency shall take to implement environmental commitments. The FAA shall take steps as

appropriate to the action, through special conditions, funding agreements, contract specifications, preferential arrival and departure procedures, directives, other project review or implementation procedures, and other appropriate follow-up actions that the agency and applicants carry out any actions to minimize adverse environmental effects set forth in the approved statement. Any proposed deviation from prescribed action that may reduce protection to the environment shall be submitted to the Office of Environment and Energy.

95. LIMITATIONS ON ACTIONS. In accordance with CEQ sec. 1506.1, actions concerning the proposal shall not be taken until the responsible office issues the Record of Decision.

96. RECORD OF DECISION.

a. Following the review periods prescribed in CEQ sec. 1506.10, the FAA decisionmaker may make a decision on the Federal action. CEQ sec. 1505.2 requires a Record of Decision (ROD) and specifies information to be included in the Record of Decision. The draft ROD should accompany the proposed final statement during the internal review prior to EIS approval only when headquarters' concurrence is required.

b. Any mitigation measures which were made a condition of the approval of the EIS shall be included in the ROD. Proposed changes in or deletions of mitigation measures which were a condition of approval of the EIS must be reviewed by the same FAA offices which reviewed the final statement and must be approved by the EIS approving official.

c. If the responsible official wishes to take an action which was included within the range of alternatives of an approved EIS but was neither the environmentally preferable alternative or alternatives nor the agency's preferred alternative as identified in the final statement, the decisionmaker must first coordinate a draft ROD for concurrence with the same FAA offices which reviewed the final statement. These offices may concur without comment, may concur on the condition that specific mitigation measures be incorporated in the ROD, may request that a supplement to the EIS be prepared and circulated, or may nonconcur. The responsible official shall not approve the Federal action over a nonconcurrence.

d. If the alternative the responsible official wishes to take action on involves a special interest (e.g., Section 4(f) land, endangered species, wetlands, historic sites, or others), the FAA must first complete any required evaluation and consultation that has not been done, including supplementing the original EIS, prior to taking the action. Supplements to EISs shall be reviewed and approved in the same manner as the original document, and a new ROD shall be prepared and approved. If a ROD is prepared, a copy should be forwarded with the EIS to AEE-1 for their files.

97. PUBLIC RECORD. Relevant environmental documents, comments, and responses are part of the agency's public record and shall be made available to the public through appropriate regional, office or service procedures.

98. USE OF INFORMATION.

a. CEQ sec. 1506.5(c) specifically provides "Nothing ... is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency."

b. The use of information obtained in the manner set forth above may obviate the need for extensive contractual efforts in preparing an environmental impact statement. It must be cautioned, however, that any information so received may only be used after thorough analysis and acceptability of its contents by the FAA. To the extent that the qualifications of those persons primarily responsible for its preparation and the identification of persons responsible for particular analyses should be listed for incorporation in the list of preparers of the environmental impact statement (see paragraph 68 of this order).

99.-100. RESERVED.

CHAPTER 10. ADDITIONAL PROVISIONS

101. REVIEW OF ENVIRONMENTAL STATEMENTS PREPARED BY OTHER AGENCIES. Other Federal, State or local agencies may consult FAA for assistance in analyzing environmental impacts which fall within the agency's functional area of responsibility. FAA should provide competent and cooperative advisory and consultative service on proposals affecting aviation and FAA responsibilities.

a. Comments should be organized in a manner consistent with the structure of the draft statement and should identify alternatives or modifications that may enhance environmental quality or avoid or minimize adverse environmental impacts, and should correct inaccuracies or omissions.

b. FAA projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that interrelationships can be discussed in the final statement. In such cases, the FAA should consider serving as a joint lead agency or cooperating agency.

c. Environmental monitoring for which FAA has special expertise may be suggested and encouraged during construction, startup, or operation phases.

d. Other agencies will generally be requested to forward their draft EISs directly to the appropriate FAA regional offices. The following types of matters, however, should be referred to FAA headquarters for comment:

(1) Actions with national policy implications;

(2) Projects that involve natural, ecological, cultural, scenic, historic, or park or recreation resources of national significance; and

(3) Legislation, regulations having national impacts, or national program proposals.

Draft EISs in these categories are to be referred to P-1 for preparation of DOT comments and, where appropriate, to FAA headquarters. In referring these matters to FAA headquarters, the regional office is encouraged to prepare a proposed Departmental response.

e. Regional offices should review DEISs that do not have national implications. Comments should be forwarded directly to the office which the originating agency designates for receipt of comments. If the FAA receiving office believes that another DOT office also has an interest or is in a better position to respond, it should transmit the statement to the other office. If FAA and other DOT administrations comment at the regional level, the Regional Representative or designee may coordinate the comments.

f. When appropriate, the FAA should coordinate a response with Department offices having special expertise in the subject matter.

g. Comments shall be submitted within the time limits set forth in the request, unless the office responsible for submitting comments seeks and receives an extension of time. Comments should be concise, and should specify any changes desired either in the action proposed or in the environmental statement or both.

h. Copies of comments on another agency's EIS shall be provided to the requesting agency, to AEE-1 to P-1, and to the Regional Representative if a regional office prepared the comment.

102. EMERGENCY ACTION PROCEDURES. CEQ regulations allow modification of requirements in case of a national emergency, a disaster or similar great urgency. The processing times may be reduced or, if the emergency situation warrants, preparation and processing of a DEIS, EIS, or FONSI may be abbreviated. Such reduction in processing time should be requested from CEQ only for those projects where the need for immediate action requires processing in other than the normal manner.

103. APPLICATION OF CEQ SECTION 102(2)(C) PROCEDURE TO EXISTING PROJECTS AND PROGRAMS. The CEQ sec. 102(2)(C) procedure applies to major Federal actions having a significant effect on the environment even though they arise from projects or programs initiated prior to enactment of NEPA on January 1, 1970. In assessing the environmental effect of proceeding with such a project and in evaluating alternatives, consideration shall be given to the status of work and degree of completion. If the project or program is continued, it must, to the extent feasible, be shaped so as to enhance and restore environmental quality, avoid or minimize adverse environmental consequences, and consider environmental consequences not fully evaluated at the outset of the project or program.

104. ENVIRONMENTAL IMPACT STATEMENTS OR FINDINGS OF NO SIGNIFICANT IMPACT ON REQUESTS FROM FOREIGN SOURCES.

a. In compliance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, requests for FAA action by a foreign government, manufacturer or operator may fall within criteria requiring preparation of an EA, EIS, or FONSI. The responsible Federal official shall coordinate such requests with the State Department through P-30. After the State Department's notification all FAA requests to such a foreign applicant for information which FAA needs to prepare an EIS or FONSI should then be forwarded through the civil aviation authority of the applicant's government. Copies of the DEIS, EIS, and notices of any public hearings planned on the proposed action should be furnished to the applicant, the appropriate foreign civil aviation authority, and the Washington embassy of the country in which the applicant is located.

b. Any substantial differences arising in the course of the EIS between the originating FAA organization and a foreign applicant should be referred to the Office of Environment and Energy, which will consult with the Associate Administrator for Policy and International Aviation Affairs to resolve any problems.

105.-106. RESERVED.

SUBJ: POLICIES AND PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

1. PURPOSE. This change transmits revised pages 1 and 2 to Appendix 1, Airway Facilities (AF) Organizations, and revised pages 1 through 57 to Attachment 2, Analysis of Environmental Impact Categories.

2. EXPLANATION OF CHANGE.

a. The Airway Facilities Service is responsible for keeping its service appendix, Appendix 1, current in Order 1050. Appendix 1, paragraphs 1 and 2 are being revised based on recent reorganizations.

b. Attachment 2, *Environmental Analysis Procedures* is re-titled *Analysis of Environmental Impact Categories*, revised, reorganized as explained below, and replaced in its entirety. Attachment 2 contains the specific environmental analysis procedures to be used in preparing environmental documents. The impact categories are now listed in alphabetical order, instead of common application to proposed FAA actions. Attachment 2 has been revised to update the procedures and requirements in air quality; coastal resources; historical, architectural, archeological, and cultural resources; farmlands; fish, wildlife, and plants; noise; socioeconomic impacts; water quality; and wetlands. The Solid Waste section has been re-titled Hazardous Materials and Solid Waste and updated to explain how hazardous waste laws and pollution prevention should be addressed in environmental documents. The Energy section has been re-titled Natural Resources and Energy. The Wildlife and Waterfowl section and the Endangered and Threatened Species of Fauna and Flora section have been combined and re-titled Fish, Wildlife, and Plants. The Light Emissions and Visual Impacts sections have been combined.

(1) The Air Quality section now addresses the 1990 amendments to the general conformity requirements under Section 176(c) of the Clean Air Act, as implemented by 40 CFR Parts 93 and 51. The Air Quality section also clarifies that the Emissions and Dispersion Modeling System must be used to assess air quality impacts of proposed airport development projects (63 FR 18068, April 13, 1998).

(2) The Coastal Resources section addresses the 1992 Amendments to the Coastal Zone Management Act as well as the 1982 Coastal Barrier Resources Act.

(3) The Section 4(f) Section has been revised to include guidance concerning reliance upon the land use compatibility guidelines in 14 CFR Part 150.

(4) The Farmlands section includes the 1995 Amendments to the regulations implementing the Federal Farmland Protection Act.

(5) The Hazardous Materials and Solid Waste section includes requirements under various hazardous waste laws, such as the Resource Conservation and Recovery Act as amended in 1992 and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended in 1986 and 1992, and 1993 guidance from the Council on Environmental Quality for incorporating pollution prevention in NEPA analyses (58 FR 6478, January 29, 1993).

(6) The Historical, Architectural, Archeological, and Cultural Resources section now reflects the 1992 Amendments to the National Historic Preservation Act and the 1999 revisions to 36 CFR Part 800 for implementing Section 106, the Native American Graves protection and Repatriation Act of 1990, as implemented by 43 CFR Part 10, the American Indian Religious Freedom Act of 1978, as amended in 1994 (P.L. 103-344), and Executive Order 13007, Indian Sacred Sites.

(7) The Fish, Wildlife, and Plants section, which combines the previous Flora and Fauna section and Endangered Species section in 1050.1D, has been updated to reflect the Council on Environmental Quality's 1993 guidance for Incorporating Biodiversity Considerations into Environmental Impact Analysis Under the National Environmental Policy Act, the 1994 Memorandum of Understanding on Implementing the Endangered Species Act, the 1995 Memorandum of Understanding on Using an Ecosystem Approach in Agency Decision-making, Executive Order 13112, Invasive Species, which replaced Executive Order 11987, Exotic Species, the 1999 DOT Policy on Invasive Species, and the 1998 Fish and Wildlife Service and National Marine Fisheries Service Endangered Species Consultation Handbook: *Procedures for Conducting*

Consultation and Conference Activities Under Section 7 of the Endangered Species Act.

(8) The Noise section has been updated to adopt the recommendations of the Federal Interagency Committee on Noise that were published in a report entitled, *Federal Agency Review of Selected Airport Noise Analysis Issues*, dated August 1992. The FAA published a notice in the Federal Register (57 FR 44223, September 24, 1992) requesting public review and comment on the FICON report and recommendations.

(9) The Socioeconomic Impacts section has been updated to address the Executive Order on Environmental Justice dated February 1994, as implemented, in part, by the U.S. Department of Transportation Order, dated April 1997 (62 FR 18377, April 15, 1997).

(10) The Water Quality section reflects 1996 (P.L. 104-182) Amendments to the Safe Water Drinking Act and November 1990 regulations for National Pollution Discharge Elimination System Permits for Industrial Stormwater.

(11) The Wetlands section incorporates 1996 Amendments to regulations governing Clean Water Act Section 404 permits and FAA's Wetland Banking Policy dated July 1996.

c. Attachment 2 has been reorganized so that each environmental impact category, e.g., air quality, contains an overview box that highlights the major applicable Federal environmental statutes, regulations, executive orders, and guidance, and identifies the over sight agency(ies). Other related Federal statues may apply but are too numerous to include.

d. The majority of the impact categories are divided into the following discussion areas: (a) Requirements, (b) FAA Responsibilities, and (c) Analysis of Significant Impacts. There are a few impact categories (i.e., noise) that will have a discussion area on Significant Impact Thresholds if thresholds have been established by the FAA or appropriate oversight agencies. When there is a discussion area on Significant Impact Thresholds, it will follow the FAA Responsibilities discussion area.

3. DISPOSITION OF TRANSMITTAL. After filing the attached pages, this change transmittal should be retained.

PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
v and vi	12/5/86	v and vi	6/14/99
Appendix 1 1 and 2	12/5/86	Appendix 1 1 and 2	6/14/99
Attachment 2 1 thru 19	12/21/83 12/10/84 3/13/85 12/5/86	Attachment 2 1 thru 57	6/14/99

James D. Erickson
Director

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APPENDIX 1. AIRWAY FACILITIES (AF) ORGANIZATIONS

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1. GENERAL. This appendix sets forth environmental procedures to be used by the Airway Facilities (AF) organization. All AF headquarters, regional, engineering center, implementation center and field level organizations shall comply with the requirements of this order.

2. ENVIRONMENTAL RESPONSIBILITIES.

Airways Facilities: Implementation Center and Regional Office. For Facilities and Equipment (F&E) programs and projects, the NAS Implementation Program (ANI) Implementation Center (IC) Manager shall be responsible for conducting an environmental assessment (EA) in accordance with this order and shall be responsible for the preparation and coordination of the document. Signature authority for categorical exclusions, EAs, environmental impact statements (EISs), and Finding of No Significant Impact (FONSIs) documentation is held by the IC Manager who shall ensure that this documentation is coordinated with the initialed by the Operations Branch (AXX-470) of the Regional Airway Facilities (AF) Division. The actual approval and certification may not be re-delegated. For AF projects outside the purview of the ANI organization, the AF division manager shall be solely responsible for conducting and signing the categorical exclusion, EA, EIS, and FONSI documentation. The IC Manager shall provide National Environmental Policy Act (NEPA) training to appropriate ANI personnel to ensure compliance with this order. The AF division manager shall provide NEPA training to appropriate regional personnel to ensure compliance with this order. *

3. ENVIRONMENTAL IMPACT STATEMENTS OR FONSI.

a. Environmental assessments should be developed along with economic and technical considerations in the facility siting and design. Careful consideration of the specific site and the effect of aircraft operations are necessary. Where the individual location or the operational use of the facility indicates significant environmental impact, an EIS should be prepared and circulated in accordance with this order.

b. Those projects which have been categorically excluded or a FONSI filed do not require further action unless a particular case significantly affects the quality of the human environment and requires the preparation of an EIS.

4. PROJECTS SUBJECT TO ENVIRONMENTAL ASSESSMENTS AND PROCEDURES. The following categories of projects are subject to an environmental assessment and preparation of an EIS or FONSI:

a. Establishment or relocation of facilities such as Air Route Traffic Control Centers (ARTCC), Airport Traffic Control Towers (ATCT), Air Route Surveillance Radars (ARSR), Beacon Only Sites, and Next Generation Radar (NEXRAD). These facilities may affect the environment because of land or access requirements; the electronic emissions generated by its operation; the impact on water and sewerage facilities, power distribution facilities, rainfall runoff and traffic flow from public roadways; and the impact on personnel in a given locale.

b. Establishment, relocation, or construction of facilities used for communications and navigation which are not on airport property. The environmental impact of these facilities normally results from providing access to the off-airport facility and construction of the facility.

c. Establishment or relocation of Instrument Landing or Microwave Landing Systems (ILS or MLS), and Approach Light Systems (ALS). These facilities may be the subject of environmental controversy because of the impact of a change in operational use and the location of certain elements off airports.

d. Establishment of FAA housing, sanitation systems, fuel storage and distribution systems, and power source and distribution systems normally should be assessed because of their location, and impact on community land use planning.

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ATTACHMENT 2. ANALYSIS OF ENVIRONMENTAL IMPACT CATEGORIES

This attachment provides specific environmental analysis procedures to be used in preparing environmental assessments (EA's) and environmental impact statements (EIS's).

The table of contents lists the potential impact category within this attachment.

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2. Coastal Resources....9
3. Compatible Land Use....11
4. Construction Impacts....15
5. Department of Transportation Act Sec. 4(f)....16
6. Farmlands....19
7. Fish, Wildlife, and Plants....21
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This paragraph contains a summary of the requirements and procedures to be used in evaluating these categories of environmental impacts in the Environmental Consequences section of environmental documents.

To effectively use this attachment, first become familiar with the material contained in each section. The overview box highlights major applicable Federal statute(s), regulations, executive orders, and guidance and the oversight agency(ies). Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, is addressed in this attachment in paragraph 15, Socioeconomic Impacts. Since environmental justice is defined as any adverse and disproportionately high impact on minority and low-income groups, this E.O. applies to other impact categories where appropriate. The other related Federal requirements that may apply were too numerous to list.

The information, however, should guide the responsible Federal Aviation Administration (FAA) official to appropriate resources and applicable requirements to be addressed as part of the National Environmental Policy Act (NEPA) process. To assist in this effort, the majority of the impact categories are divided into the following discussion areas: (1) Requirements, (2) FAA Responsibilities, and (3) Analysis of Significant Impacts. A few impact categories will also have a discussion area on Significant Impact Thresholds if thresholds have been

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established by the FAA or appropriate oversight agencies. When there is a discussion area on Significant Impact Thresholds, it will follow the FAA Responsibilities discussion area.

Should a proposed Federal action have a potential air quality impact for example, review the Air Quality section of the attachment to identify the legal references for air quality impacts. These requirements are summarized for ease of use; however, if further information is required, the law, associated implementing regulations, and FAA policy should be reviewed with the Office of the Chief Counsel staff and/or regional counsel support and through coordination with appropriate Federal and State agency personnel.

Once the standards and relationship of the requirements to the project are understood, the significant impact thresholds established by oversight agencies should be reviewed. This section summarizes the impact threshold used to define significance of the effects of the proposed action where such thresholds have been established. For example, the FAA has issued guidance in determining the scope and context of potential noise impacts, and thus, whether an EIS is required.

The final section, the analysis of impacts, provides guidance on the types and levels of evaluation when the impact is determined to be significant. It includes further information on consultations, studies, and identification of mitigation alternatives and monitoring actions.

Each potential impact category relevant to a FAA proposed action and alternative(s) identifies alternative mitigation measures that should be followed except as otherwise provided under the procedures of Section 176(c) of the Clean Air Act, Section 106 of the National Historic Preservation Act, or other special purpose environmental laws.

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1. AIR QUALITY

Statute	Regulation	Oversight Agency
Clean Air Act (CAA), as amended [42 United States Code (U.S.C.) section 7401 et seq.] [Public Law (PL) 91-604, PL 101-549]	Title 40 Code of Federal Regulations (CFR) Parts 9, 50-53, 60, 61, 66, 67, 81, 82, and 93 (which includes General Conformity)	Environmental Protection Agency
49 U.S.C. 47106(c)(1)(B), as amended (formerly sections 509(B)(5) and (B)(7) of the Airport and Airway Improvement Act of 1982, as amended; PL 97-248) [PL 103-272, as amended]		Federal Aviation Administration

a. Requirements. Three primary laws apply to air quality: NEPA, the Clean Air Act (CAA), and 49 U.S.C. 47106(c)(1)(B). As a Federal agency, the FAA is required under NEPA to prepare an environmental document (e.g., environmental impact statement (EIS) or environmental assessment (EA)) for major Federal actions that have the potential to affect the quality including air quality of the human environment. An air quality assessment prepared for inclusion in a NEPA environmental document should include an analysis and conclusions of a proposed action's impacts on air quality.

The CAA established National Ambient Air Quality Standards (NAAQS) for six pollutants, termed *criteria pollutants*. The six pollutants are: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulates (PM-10 and PM-2.5), and sulfur dioxide (SO_2). The CAA requires each State to adopt a plan to achieve the NAAQS for each pollutant within timeframes established under the CAA. These air quality plans, known as State implementation plans (SIP), are subject to Environmental Protection Agency (EPA) approval. In default of an approved SIP, the EPA is required to promulgate a Federal implementation plan (FIP).

Title 49 U.S.C. 47106(c)(1)(B) provides that the DOT/FAA may not approve a grant application for an airport development project involving the location of the airport, runway, or major runway extension, unless the Governor of the State in which the project will be located certifies that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air quality standards. Certification must be obtained from the Governor of the State prior to FAA approval of the project. Alternatively, unless delegation is prohibited under applicable State law, certification may be obtained from a State official to whom the Governor has expressly delegated, in writing, his or her authority in this area.

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When a NEPA analysis is needed, the proposed action's impact on air quality is assessed by evaluating the impact of the proposed action on the NAAQS. The proposed action's *build* and *no-build* emissions are inventoried for each reasonable alternative. The inventory should include both direct and indirect emissions that are reasonably foreseeable. Normally, further analysis would not be required for pollutants where emissions do not exceed general conformity thresholds. However, based on the nature of the project and consultation with State and local air quality agencies additional analysis may be deemed appropriate. If there are any questions about whether additional analysis is reasonable, contact the appropriate headquarters office and the Office of Environment and Energy. If required, the emissions for the proposed build case then are translated into pollutant concentrations using a dispersion model. Depending on the project, this step can be data and computation intensive. Once dispersion modeling has been performed, pollutant concentrations are combined with background pollutant concentrations and compared to the NAAQS. If concentrations do not exceed the NAAQS, then the analysis is complete. If concentrations exceed the NAAQS, emissions must be mitigated or offset, or the action redesigned to reduce emissions.

In addition to NEPA, General Conformity, and grant funding requirements, there may be State and local air quality requirements to consider. These requirements can include, but are not limited to, provisions such as State indirect source regulations and State air quality standards.

Section 176(c) of the CAA, as amended in 1990, requires that Federal actions conform to the appropriate Federal or State air quality plans (FIPs or SIPs) in order to attain the CAA's air quality goals. Section 176(c) states:

> "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan."

Conformity is defined as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such Federal activities will not:

(1) Cause or contribute to any new violation of any standard in any area.

(2) Increase the frequency or severity of any existing violation of any standard in any area.

(3) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA 1990 Amendments required the EPA to issue rules that would ensure Federal actions conform to appropriate FIP or SIP. A final rule

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for determining conformity of general Federal actions (40 CFR Part 93, Subpart B) was published in the Federal Register (FR)on November 30, 1993, and became effective January 31, 1994. In addition, 40 CFR Part, 51 Subpart W specify requirements for conformity which States must include in their respective SIP's. Once a SIP conformity provision has been approved by EPA, the State conformity requirements included in the SIP apply. EPA issued separate rules addressing conformity of highway, roadway, and transit plans and projects (40 CFR Part 93, Subpart A, and 40 CFR Part 51, Subpart T) on November 15, 1993. The remaining conformity discussion addresses only General Conformity since FAA actions are subject to this rule, although projects involving airport access may also be subject to some provisions of Transportation Conformity.

The General Conformity Rule establishes the procedures and criteria for determining whether certain Federal actions conform to State or EPA (Federal) air quality implementation plans. To determine whether conformity requirements apply to a proposed Federal action, the following must be considered: the non-attainment or maintenance status of the area; type of pollutant/emissions; exemptions from conformity and presumptions to conform; the project's emission levels; and the regional significance of the project's emissions. FAA actions are subject to the General Conformity Rule. Projects involving airport access may also be subject to some provisions of Transportation Conformity.

General conformity requirements are distinct from NEPA requirements. For example, NEPA may require FAA to analyze several alternatives in detail. If a general conformity determination is required, only the proposed action must be addressed. General conformity, like other environmental requirements, should be integrated into the NEPA process as much as possible. For example, the draft conformity determination should be issued along with any required draft EIS for public comment. However, there may be valid reasons to address general conformity separately rather than concurrently.

The General Conformity Rule only applies in areas that EPA has designated non-attainment or maintenance. A non-attainment area is any geographic area of the U.S. that experiences a violation of one or more NAAQS. A maintenance area is any geographic area of the U.S. previously designated non-attainment for a criteria pollutant pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment.

The rule covers direct and indirect emissions of criteria pollutants or their precursors from Federal actions that meet the following criteria:

(1) Reasonably foreseeable, and
(2) Can practicably be controlled and maintained by the Federal agency through continuing program responsibility.

A conformity determination is not required if the emissions caused by the proposed Federal action are not reasonably foreseeable; if the emissions caused by the proposed Federal action cannot practicably be controlled and maintained by the Federal agency through its continuing program responsibility; if the action is listed as exempt or presumed to

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conform; or if the action is below the emission threshold (*de minimis*) levels. The emission threshold levels are defined in the General Conformity Rule.

Certain Federal actions are exempt from the requirement of the General Conformity Rule because they result in no emissions or emissions are clearly below the rule's applicability emission threshold levels. These include, but are not limited to:

(1) Continuing and recurring activities such as permit renewals.

(2) Routine maintenance and repair activities.

(3) Routine installation and operation of aviation and maritime navigation aids.

(4) Administrative actions.

(5) Planning studies and provision of technical assistance.

(6) The routine, recurring transportation of materiel and personnel.

(7) Transfers of land, facilities, and real properties.

(8) Actions affecting an existing structure where future activities will be similar in scope to activities currently being conducted.

(9) Enforcement and inspection activities.

(10) Air traffic control activities and adopting approach departure and en route procedures for air operations.

The General Conformity Rule (58 FR 63250, November 30, 1993) provides a provision that permits agencies to develop a list of actions presumed to conform which would be exempt from the requirements of the rule unless regionally significant (discussed below). To date, FAA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the presumption of conformity will be published in the Federal Register.

If a Federal action is not exempt or presumed to conform, the project's emissions must be analyzed with regard to conformity applicability emission levels. The rule established the threshold emission levels (annual threshold levels) to identify those actions with the potential to have significant air quality impacts. If the project's emissions are below annual threshold levels (*de minimis* levels) and are not regionally significant, then the requirements of the general conformity regulation do not apply to the Federal action or project (and therefore, a conformity determination is not required).

In determining whether emission threshold levels are exceeded (and a conformity determination required), agencies must consider direct and

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indirect emissions. Direct emissions are those that are caused by or initiated by the Federal action and occur at the same time and place as the action. Indirect emissions are those caused by the Federal action, but that occur later in time and/or may be removed in distance from the action. Temporary construction emissions must be considered in determining whether emission threshold levels are exceeded. (See EPA General Conformity Questions and Answers, dated November 1994.)

In addition, the General Conformity Rule adopted the exclusive definition of indirect emissions, which excludes emissions that may be attributable to the Federal action, but that the FAA has no authority to control. The FAA is responsible for assessing only direct and indirect emissions of criteria pollutants and precursors that are caused by a Federal action, are reasonably foreseeable, and can practicably be controlled by the FAA through its continuing program responsibility. The FAA may compare emissions with and without the proposed Federal action during the year in which emissions are projected to be greatest in determining whether emission threshold levels are exceeded.

If a Federal action does not exceed the threshold levels or is presumed to conform, it may still be subject to a general conformity determination if it has regional significance. If the total of direct and indirect emissions of any pollutant from a Federal action represent 10 percent or more of a maintenance or non-attainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and conformity rules apply. Parts of the overall Federal action that are exempt from conformity requirements (e.g., emission sources covered by New Source Review) should not be included in the analysis. The purpose of the regionally significant requirement is to capture those Federal actions that fall below threshold levels, but have the potential to impact the air quality of a region.

When it has been determined that a proposed Federal action is not exempt, presumed to conform, exceeds emission threshold levels, or is regionally significant, the agency must prepare a conformity determination based on analysis using criteria stated in EPA's General Conformity Rule (40 CFR Part 93).

A proposed action cannot be approved or initiated unless conformity does not apply or a positive conformity determination is issued (i.e., the action conforms to the SIP). If initial analysis does not indicate a positive conformity determination, alternative actions (including mitigation measures as part of the action) should be considered and further consultation, analysis, and documentation will be necessary.

b. FAA Responsibilities. The FAA has a responsibility under NEPA to include in its EA or EIS sufficient analysis to disclose the potentially significant impact of a proposed action on the attainment and maintenance of air quality standards established by law or administrative determination.

It is also the FAA's affirmative responsibility under Section 176(c) of the CAA to assure that its actions conform to applicable SIPs. Before the FAA can fund or support in any way any activity, it must address the

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conformity of the action with the applicable SIP using the criteria and procedures prescribed in the General Conformity Rule or applicable SIP.

In conducting air quality analysis for purposes of complying with NEPA and/or conformity, the FAA required model for aviation sources (aircraft, auxiliary power units, and ground support equipment) is the Emissions and Dispersion Modeling System (EDMS). The EPA accepted EDMS as a formal EPA preferred guideline model in 1993. An order form for the EDMS software and user's guide can be obtained from the EDMS Internet Site or by writing the EDMS Program, Federal Aviation Administration, Office of Environment and Energy, Rm. 902W, 800 Independence Ave., S.W., Washington, D.C. 20591.

If the proposed action either will not conform with the SIP or there is potential for the proposed action to cause the area to exceed the NAAQS, then further consultation, analysis, and documentation will be required in an EA or EIS and conformity determination document.

c. Analysis of Significant Impacts. When the analysis indicates potentially significant air quality impacts, it may be necessary to consult further with State or regional air quality officials and/or with EPA. It also is advisable to include such officials in the EIS scoping process to represent cooperating agencies with air quality expertise. These officials will help identify specific analyses needed, alternatives to be considered, and/or mitigation measures to be incorporated in the action.

AIR QUALITY ASSESSMENT PROCEDURES. NEPA, the CAA Amendments of 1990, and 49 U.S.C. 47106(c)(1)(B) have separate requirements and processes; however, their steps can be integrated and combined for efficiency. Also, an air quality analysis can require the coordination of many different agencies. Such coordination and subsequent analysis takes time; therefore, air quality impacts should be addressed as **EARLY** as practicable when preparing an EA or EIS. For more detailed guidance on air quality procedures see the FAA's *Air Quality Procedures for Civilian Airports and Air Force Bases*, April 1997.

MODELING REQUIREMENTS. The EDMS is FAA's required methodology for performing air quality analysis modeling for aviation sources. EDMS also offers the capability to model other airport emission sources that are not aviation-specific, such as power plants, fuel storage tanks, and ground access vehicles.

Except for air toxics or where advance written approval has been granted to use an equivalent methodology and computer model by the FAA Office of Environment and Energy, the air quality analyses for aviation emission sources from airport and FAA proposed projects conducted to satisfy NEPA, general conformity, and 49 USC 47106(c) requirements under the Clean Air Act must be prepared using the most recent EDMS model available at the start of the environmental analysis process. In the event that EDMS is updated after the environmental analysis process is underway, the updated version of EDMS may be used to provide additional disclosure concerning air quality but use is not required. A complete

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description of all inputs, particularly the specification of non-default data, should be included in the documentation of the air quality analysis. Users also must provide one copy of EDMS input files used in the analysis and the corresponding output files to the FAA official on magnetic media specified by the FAA official.

As stated above, EDMS currently is not designed to perform air toxic analyses for aviation sources, and may be supplemented with other air toxic methodology and models in consultation with the appropriate FAA regional program office. Use of supplemental methodology and models for more refined analysis of *non-aviation* sources also is permitted in consultation with the appropriate FAA regional program office.

All input data should be collected early in the environmental process and should reflect the latest available data. Assistance from the FAA Office of Environment and Energy is available on a case-by-case basis by request through the respective headquarters operating office.

2. COASTAL RESOURCES

Statute	Regulation	Oversight Agency
Coastal Barrier Resources Act of 1982 as amended by the Coastal Barrier Improvement Act of 1990 [16 U.S.C. 3501-3510] [PL 97-348]	U.S. Department of Interior Coastal Barrier Act Advisory Guidelines	Fish and Wildlife Service
Coastal Zone Management Act as amended [16 U.S.C. 1451 to 1464] [PL 92-583]	15 CFR Part 930, Subparts C and D 15 CFR Part 923	National Oceanic and Atmospheric Administration Office of Coastal Zone Management Appropriate State Agency

a. Requirements. Federal activities involving or affecting coastal resources are governed by the Coastal Barriers Resources Act (CBRA) and the Coastal Zone Management Act (CZMA). The CBRA prohibits, with some exceptions, Federal financial assistance for development within the Coastal Barrier Resources System that contains undeveloped coastal barriers along the Atlantic and Gulf coasts and Great Lakes. The CZMA and the National Oceanic and Atmospheric Administration (NOAA) implementing regulations (15 CFR Part 930) provide procedures for ensuring that a proposed action is consistent with approved coastal zone management programs.

Permits/Certificates: Not applicable.

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b. FAA Responsibilities.

CBRA. Maps specifically identifying lands included in the CBRA system are available from the Fish and Wildlife Service (FWS) office administering the CBRA program. If additional guidance on CBRA is needed, refer to the Department of Interior's (DOI) CBRA Advisory Guidelines (43 CFR Subtitle A, reference 48 FR 45664). If the proposed action would occur on land within the CBRA system and involve funding for development, the action must receive an FWS exemption from the provisions of the CBRA. Results of consultation with FWS must be incorporated in the environmental document. Project-related impacts on coastal resource biotic resources and water quality may be described in the document's CBRA section, or in the sections of the document addressing these biotic and water quality issues.

CZMA. When a proposed action affects (changes the manner of use or quality of land, water, or other coastal resources, or limits the range of their uses) the coastal zone in a State with an approved coastal zone management (CZM) program, the EA or EIS shall include the following:

(1) For Federally assisted activities or for other FAA activities, the views of the appropriate State or local agency as to the relationship of such activities with the approved State coastal zone management program, and the determination of the State as to whether the proposal is consistent with the approved State coastal zone management program.

(2) For issuance of a Federal license or permit, the applicant's certification that the proposed action complies with the State's approved program and that such activity will be conducted in a manner consistent with the program, and the State's concurrence with the applicant's certification. (Approval of an airport layout plan approval could by definition be a Federal license or permitting action). The State's concurrence may be presumed if the State does not act within six months after receipt of the applicant's certification, provided the State did not require additional information regarding that certification.

c. Analysis of Significant Impacts. When a State having an approved CZM program raises an objection to the proposed action because the action would not be consistent with the applicable CZM plan, the FAA can not approve the action, unless the objection is satisfied, or it is successfully appealed to the Secretary of Commerce. The process will be normally completed prior to a determination by the FAA of whether or not an EIS is needed for the action. If any issues remain that have not been resolved regarding the relationship of the action to an approved CZM program, such issues are identified in the scoping process and resolved in the EIS. In this situation, the State coastal zone management agency is invited to participate in the scoping process.

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For proposed actions determined to be inconsistent with the State's approved program and if the project cannot be modified so that it is consistent with the plan, the final EIS shall include a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or is necessary in the interest of national security. If a finding is not obtained from the Secretary of Commerce, the FAA can not approve the proposed action.

CBRA. Information regarding CBRA application and funding exceptions, including consultation with FWS, is sufficient for EIS purposes. Any significant impacts are reported under other appropriate impact categories.

CZMA. CZM consistency applies only to States having an approved CZM plan. If an action would occur in a State not having an approved CZM plan, the FAA should consult (as necessary) with State and Federal agencies having jurisdiction over or expertise on the affected resources to determine if additional information is needed. Discuss impacts on these resources in sections of the environmental document prepared for those resources.

3. **Compatible Land Use.**

Statute	Regulation	Oversight Agency
Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 47501-47507)	Title 14 Code of Federal Regulations (CFR) Part 150	Federal Aviation Administration

a. Requirements. The compatibility of existing and planned land uses in the vicinity of an airport is usually associated with the extent of the airport's noise impacts. Airport development actions to accommodate fleet mix changes or the number of aircraft operations, air traffic changes, or new approaches made possible by new navigational aids are examples of activities that can alter aviation-related noise impacts and land uses subjected to those impacts. In this context, if the noise analysis described in the noise analysis section, paragraph 13, concludes that there is no significant impact, a similar conclusion usually may be drawn with respect to compatible land use. However, if the proposal would result in other impacts exceeding example, disruption of communities, relocation, and induced socioeconomic impacts, the effects on land use shall be analyzed in this context and described accordingly under the appropriate impact category with any necessary cross-refereces to the Compatible Land Use section to avoid duplication.

The Compatible Land Use section of the environmental document shall include documentation to support the required sponsor's assurance under 49 USC 47107(a)(10), formerly Section 511(a)(5) of the 1982 Airport Act, that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities

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and purposes compatible with normal airport operations, including landing and takeoff of aircraft. The assurance must be related to existing and planned land uses.

The Airport Development Grant Program (49 USC 47101 *et seq.*) requires that a project may not be approved unless the Secretary of Transportation is satisfied that the project is consistent with plans (existing at the time the project is approved) of public agencies for development of the area in which the airport is located (49 USC 47106(a)(1)).

Permits/Certificates: Not applicable.

b. FAA Responsibilities. FAA officials will contact the sponsor and representatives of affected communities to encourage the development of appropriate compatible land use measures early in the project planning stage. The environmental document shall address what is being done by the jurisdiction(s) with land use control authority, including an update on any prior assurance.

Table 1 describes compatible land use information for several land uses as a function of DNL values. The ranges of DNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular DNL level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured DNL values at a site to the values listed in Table 1.

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TABLE 1— LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land Use	Yearly day-night average sound level (L_{dn}) in decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
RESIDENTIAL						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
PUBLIC USE						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Government services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
COMMERCIAL USE						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail— building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade— general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
MANUFACTURING AND PRODUCTION						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(9)	Y(9)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
RECREATIONAL						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts, and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

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Numbers in parenthesis refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute Federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM = Standard Land Use Coding Manual.

Y (YES) = Land Use and related structures compatible without restrictions.

N (No) = Land Use and related structures are not compatible and should be prohibited.

NLR = Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30 or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

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(8) Residential buildings not permitted.

c. Analysis of Significant Impacts. When the noise analysis (see Noise paragraph) indicates that a significant noise impact will occur over noise sensitive areas within the DNL 65 dB contour, the analysis should include a discussion of the noise impact on those areas. Any mitigation measures to be taken in addition to those associated with other land use controls shall be discussed. FAA Advisory Circular 150/5020-1, *Noise Control and Compatibility Planning for Airports,* presents guidance for airport operators and planners to help achieve compatibility between airports and their environs.

4. CONSTRUCTION IMPACTS

Statute	Regulation	Oversight Agency
See requirements below		

a. Requirements. Local, State, or Federal ordinances and regulations address the impacts of construction activities, including construction noise, dust and noise from heavy equipment traffic, disposal of construction debris, and air and water pollution. Many of the specific types of impacts that could occur are covered in the descriptions of other appropriate impact categories.

Permits/Certificates: National Pollutant Discharge Elimination System (NPDES) permit (when construction disturbs 1 acre or more).

b. FAA Responsibilities. The environmental document must include a general description of the type and nature of the construction and measures to be taken to minimize potential adverse effects. At a minimum, reference is made to the incorporation in project specifications of the provisions of Advisory Circular 150/5370-10A, Standards for Specifying Construction of Airports.

c. Analysis of Significant Impacts. In an unusual circumstance where a construction impact would create significant consequences that cannot be mitigated, a more thorough discussion is needed, including the results of consultations with those agencies that have concerns and the reasons why such impacts cannot be avoided or mitigated to insignificant levels.

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5. DEPARTMENT OF TRANSPORTATON - SECTION 4(f)

Statute	Regulation	Oversight Agency
Department of Transportation Act of 1966, section 4(f) [recodified at 49 U.S.C. 303 (c)]		Department of Transportation

a. Requirements. The Federal statute that governs impacts in this category is the Department of Transportation (DOT) Act, Section 4(f) provisions. Section 4(f) of the DOT Act provides that the Secretary of Transportation will not approve any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance or land from an historic site of national, State, or local significance as determined by the officials having jurisdiction thereof, unless there is no feasible and prudent alternative to the use of such land and such program, or the project includes all possible planning to minimize harm resulting from the use.

Procedural requirements are set forth in DOT Order 5610.1C, Attachment 2, paragraph 4. The FAA also uses as guidance to the extent relevant the Federal Highway Administration and Urban Mass Transportation Administration's guidance defining *Constructive Use* under 23 CFR Section 771.135 (56 FR 13269, April 1, 1991).

Designation of airspace for military flight operations is exempt from Section 4(f). The Department of Defense reauthorization in 1997 provided that " [n]o military flight operations (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of Section 303(c) of title 49, United States Code" (PL 105-85, NOV. 18, 1997).

Permits/Certificates: Not Applicable.

b. FAA Responsibilities.

(1) Any part of a publicly owned park, recreation area, refuge, or historic site is presumed to be significant unless there is a statement of insignificance relative to the whole park by the Federal, State, or local official having jurisdiction thereof. Any such statement of insignificance is subject to review by the FAA.

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(2) Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes. National wilderness areas may serve similar purposes and shall be considered subject to Section 4(f) unless the controlling agency specifically determines that for Section 4(f) purposes the lands are not being used.

(3) Where property is owned by and currently designated for use by a transportation agency and a park or recreation use of the land is being made only on an interim basis, a Section 4(f) determination would not ordinarly be required. The FAA official or sponsor should indicate in any lease or agreement involving such use that this use is temporary.

(4) Where the use of a property is changed by a State or local agency from a Section 4(f) type use to a transportation use in anticipation of a request for FAA approval, Section 4(f) shall be considered to apply, even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of Section 4(f).

For Section 4(f) properties, the initial assessment will determine whether the requirements of Section 4(f) are applicable. When there is an actual physical taking of lands being used for park purposes in conjunction with a project, there is generally no latitude for judgement regarding 4(f) applicability. Use within the meaning of Section 4(f) includes not only actual, physical takings of such lands but also adverse indirect impacts (constructive use) as well. When there is no physical taking, but there is the possibility of adverse impacts, the FAA must determine if the activity associated with the proposal is compatible or conflicts with the normal activity associated with the land. The proposed action is compatible if it would not affect the normal activity or aesthetic value of a 4(f) resource. When this is the case, the action would not constitute a use and would not therefore invoke Section 4(f) of the DOT Act.

In determining whether there is constructive use, the FAA determines whether increases in noise or other impacts due to proximity of the project are so severe that the activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the activities, features, or attributes of the resource that contribute to its significance or enjoyment are substantially diminished. A project which respects a park's territorial integrity may still, by means of noise, air pollution, or otherwise, dissipate its aesthetic value, harm its wildlife, defoliate its vegetation, and take it in every practical sense.

The land use compatibility guidelines in 14 CFR Part 150 (Part 150) may be relied upon to determine whether there is a constructive use under Section 4(f) (and a potentially significant impact under the NEPA) where the land uses specified in the regulation bear some relevance to the

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value, significance, and enjoyment of the 4(f) lands in question. For example, Part 150 criteria may be relied upon in evaluating constructive use of lands devoted to traditional recreational activities. FAA may primarily rely upon the average day night sound levels (DNL) in Part 150 rather than single event noise analysis because DNL is the best measure of significant impact on the quality of the human environment and is the only noise metric with a substantial body of scientific data on the reaction of people to noise.

Turning to historic sites, FAA may also rely upon Part 150 criteria to evaluate impacts on historic properties that are in use as residences. If architecture and place in history are the relevant characteristics of an historic neighborhood, then project-related noise does not degrade the values that led to eligibility for or listing on the National Register of Historic Places. As a result the noise does not constitute an adverse effect and Section 4(f) would not be triggered. A historic property would not be " used" for Section 4(f) purposes when FAA issues a finding of " No Effect" or " No Adverse Effect" under Section 106 of the National Historic Preservation Act. Although there may be some physical taking of land, Section 4(f) does not apply to archeological resources that have value chiefly for data recovery and which are not important for preservation in place.

Carefully evaluate whether to rely solely upon Part 150 criteria when assessing use of Section 4(f) properties where a quiet setting is a generally recognized feature or attribute of the site's significance or impacts upon enjoyment of an urban park where serenity and quiet are significant attributes. For example, Part 150 guidelines are of little use in addressing the effects of noise on the expectations and purposes of persons who visit wildlife refuges to study and enjoy wildlife. The FAA official must consult all appropriate Federal, State, and local officials having jurisdiction over the affected property's impacts on Section 4(f) resources.

The FAA official should become aware of and make all reasonable attempts to consult with other Federal, State, and local officials who have responsibility over any adjacent, nearby, or potentially affected properties.

If it is determined that Section 4(f) is applicable and there are no feasible or prudent alternatives which would avoid such use, the effect on the Section 4(f) land shall be described in detail. The description of the land shall include size, activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, or other factors necessary to determine the effects of the action and measures needed to minimize harm. Such measures may include replacement of land and facilities and design measures such as planting or screening to mitigate any adverse effects. Replacement satisfactory to the Secretary of the Interior (DOI) is specifically required for recreation lands aided by the DOI's Land and Water Conservation Fund and for certain other lands falling under the jurisdiction of the DOI. The environmental document shall include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over such land regarding actions proposed to minimize harm.

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If Federal grant money was used to acquire the land involved (e.g., open space under the Department of Housing and Urban Development (HUD) and various conservation programs under DOI) the environmental document shall include evidence of or reference to appropriate communication with the grantor agency.

c. Significant Impact Thresholds. A significant impact would occur when a proposed action would eliminate or severely degrade the purpose of use for which the Section 4(f) land was established and mitigation would not reduce the impact to levels that would allow the purpose or use to continue.

d. Analysis of Significant Impacts. The FAA shall consult with the officials having jurisdiction over the Section 4(f) property(ies), and other agencies, as necessary. The EIS thoroughly analyzes and documents alternatives that would avoid the use of Section 4(f) property and provide detailed measures to minimize harm.

6. FARMLANDS

Statute	Regulation	Oversight Agency
Farmland Protection Policy Act [7 U.S.C. 4201 et seq.] [PL 97-98] Food Security Act of 1985 [PL 99-198]	7 CFR Part 658 (57 FR 31110) 7 CFR Part 657 (43 FR 4030)	Natural Resource Conservation Service

a. Requirements. The Farmland Protection Policy Act (FPPA) regulates Federal actions with the potential to convert farmland to non-agricultural uses.

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. Consultation with the Natural Resources Conservation Service (NRCS) should occur to determine if the FPPA applies to the land the proposed action would convert, or if an exemption to the FPPA exists. If it is determined that the farmland is protected by the FPPA, formal coordination as provided by 7 CFR Part 658 is required.

The FAA official should become aware of and make all reasonable attempts to consult with other Federal, State, and local officials who have responsibility over any adjacent, nearby, or potentially affected lands to assure compatibility of the proposed action and affected farmland.

For FPPA-regulated farmland, scoring of the relative value of the site for preservation is performed by the NRCS and the proponent. If the total score on Form AD-1006 is below 160, no further analysis is

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necessary. Scores between 160 and 200 may have potential impacts and require further consideration of alternatives that would avoid this loss. Consider measures that reduce the amount of protected farmland that the project would convert or use farmland having relative lower value. If NRCS fails to respond within 45 days and if further delay would interfere with construction activities, the action may proceed as though the site were not farmland protected by the FPPA. The FAA then documents a *no response* by the NRCS in the environmental document.

If there are unresolved land use issues with State and local officials, then further consultation will be required.

c. Significant Impact Thresholds. A significant impact would occur when the total combined score on Form AD 1006 (copies available from NRCS) ranges between 200 and 260 points. Note that impact severity increases as the total combined score approaches 260 points.

d. Analysis of Significant Impacts. The analysis evaluates the impacts on agricultural production in the area; compatibility with State, local and private programs and policies to protect farmland; any disruption of the farming community either as a direct result of the construction or by changes in land use associated with the action; and non-viability of farm support services in the area as a result of farmland conversion. Measures to minimize harm will be considered, including adjustments in the action to reduce the amount of farmland taken out of production or retain as much of the land as possible for agricultural use by incorporation into compatible land use plans.

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7. FISH, WILDLIFE, AND PLANTS

Statute	Regulation	Oversight Agency
Endangered Species Act of 1973 [16 U.S.C. 1531 to 1544] [PL 93-205]	50 CFR Parts 17 and 22 50 CFR Part 402 50 CFR Parts 450-453 MOU on Implementation of the Endangered Species Act, 9/28/94 MOU on Using an Ecosystem Approach in Agency Decision-making, 12/5/95 CEQ Guidance on Incorporating Biodiversity Considerations into Environmental Impact Analysis, January 1993	Fish and Wildlife Service National Marine Fisheries Service U.S. Department of the Interior Council on Environmental Quality
Sikes Act Amendments of 1974 [PL 93-452, 88 Stat. 1369]		State Natural Heritage Programs
Executive Order 13112, Invasive Species	DOT Policy on Invasive Species, 4/22/99	
Fish and Wildlife Coordination Act of 1958 [16 U.S.C. 661-666c] [PL 85-624, 72 Stat. 563]		
Fish and Wildlife Conservation Act of 1980 [16 U.S.C. 2901 to 2912] [PL 96-366, 94 Stat. 1322]	50 CFR Part 83	

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a. Requirements.

Section 7 of the Endangered Species Act (ESA), as amended, applies to Federal agency actions and consultations. Section 7(a)(2) requires each agency, generally the lead agency, in consultation with the Services to ensure that any action the agency authorizes, funds, or carries out is not likely to jeopardize the continued existence of any Federally listed endangered or threatened species or result in the destruction or adverse modification of critical habitat. (The effects on fish, wildlife, and plants include the destruction or alteration of habitat and the disturbance or elimination of fish, wildlife, or plant populations.) Section 10 recovery plans should be reviewed for guidance. If a species has been listed as a candidate species, Sec. 7(a)(4) states that each agency shall confer with the Services. Refer to the FWS and NMFS *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*, March 1998.

The Sikes Act and various amendments authorizes States to prepare statewide wildlife conservation plans and the Department of Defense (DOD) to prepare similar plans for resources under its jurisdiction. Actions should be checked for consistency with the State Wildlife Conservation Plans and DOD plans where such plans exist.

The Fish and Wildlife Coordination Act requires that agencies consult with the State wildlife agencies and the Department of the Interior (FWS) concerning the conservation of wildlife resources where the water of any stream or other water body is proposed to be controlled or modified by a Federal agency or any public or private agency operating under a Federal permit.

The Fish and Wildlife Conservation Act provides for financial and technical assistance to States to develop conservation plans, subject to approval by the Department of the Interior, and implement State programs for fish and wildlife resources. The Fish and Wildlife Conservation Act also encourages all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act.

EO 13112, Invasive Species, and the DOT Policy on Invasive Species require FAA to identify proposed actions that may involve risks of introducing invasive species on native habitat and populations" Introduction" is the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity. " Invasive species" are alien species whose introduction does or is likely to cause economic or enviornmental har or harm to human health. Section 2 of the Executive Order spells out Federal agency duties. Where such an action has been identified, FAA may not authorize, fund, or carry out actions that the FAA believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined that the benefits of

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such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions. In addition, FAA must to the extent practical and permitted by law, and subject to the availability of approriations, and within Administration budgetary limits, use relevant programs and authorities to prevent introduction; detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; monitor invasive species populations accurately and reliably; provide for restoration of native species and habitat conditions in ecosystems that have been invaded; conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and promote public education on invasive species and the means to address them. Other related requirements, include the Aquatic Nuisance Plant Control Act, which includes provisions relating to the brown tree snake, and those laws governing import or export of plants and animals across state and national borders, such as the Lacey Act Amendments of 1991, which prohibit the transport across state lines of any wildlife or plants taken in violation of any State law, depending on the circumstances. The Presidential Memorandum on Economically and Environmentally Beneficial Landscaping encourages the use of native plants at Federal facilities and in federally funded projects.

a. The CEQ guidance on incorporating biodiversity considerations into environmental impact analyses under the National Environmental Policy Act requires Federal agencies to consider the effects of Federal actions on biodiversity to the extent that is possible to both anticipate and evaluate those effects. The guidance outlines the general principles and discusses the importance of context, that is, examining the indirect, direct, and cumulative impacts of a specific project in the regional or ecosystem context.

b. The MOU on Using an Ecosystem Approach in Agency Decision-making requires FAA to participate, as appropriate to its mandates, in ecosystem management efforts initiated by other Federal agencies, by state, local or tribal governments, or as a result of local grass-roots efforts. The ecosystem approach, consistent with the requirements in NEPA to use ecological information, emphasizes consideration of all relevant and identifiable ecological and economic consequences both long term and short term; coordination among Federal agencies; partnership; communication with the public; efficient and cost-effective implementation; use of best available science; improved data and information management, and responsiveness to changing circumstances.

Permits/Certificates: Various wildlife statutes, such as the Marine Mammal Protection Act, require permits.

b. FAA Responsibilities. Coordination is to be initiated with the Services pursuant to the ESA for Federally listed endangered, threatened, and candidate species or designated critical habitat, and, pursuant to the Fish and Wildlife Coordination Act where there is a potential impact on water resources with the Services as well as other Federal, State, Tribal, and local agencies having administration over

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fish, wildlife, and plant resources. For Federally listed, proposed, and candidate species and listed and proposed critical habitat, this initial step is known as informal consultation and triggers the ESA Section 7(d) prohibition on irreversible or irretrievable commitment of resources.

Letters will be obtained from these officials on the possible effects of the proposal on these resources and possible mitigation measures. The letters from the appropriate officials will provide an indication of the potential for substantial damage to water resources and wildlife attributable to the proposal, if applicable.

Informal consultation under ESA Section 7: Informal consultation with the Services under Section 7 of the ESA will clarify whether and what Federally listed, proposed, or candidate species or Federally designated or proposed critical habitat may be found in the potentially impacted areas, determine what effect the action may have on these species or critical habitats; explore ways to modify the action to reduce or remove adverse effects to the species or critical habitats; determine the need to enter into formal consultation for listed species or designated critical habitat, or conference for proposed species or proposed critical habitat; and explore the design or modification of an action to benefit the species. The Services will prepare or concur with the action agency's species list and identify major gaps in biological information. A biological assessment (BA) is defined as information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. Biological assessments are mandatory for " major construction activities." See 50 CFR Section 402.02. BA's are not required to analyze alternatives to proposed actions. The recommended contents of a BA are found in 50 CFR Section 402.12(f). For other types of proposed actions, the Federal agency must provide the Services with the information the Federal agency used in evaluating the likely effects of the action. Informal consultation ends if the proposed action, whether a major construction activity or other action, is not likely to adversely affect species or critical habitat (i.e., effects are expected to be completely beneficial (contemporaneous positive effects without any adverse effects to the species), discountable (extremely unlikely to occur), or insignificant (should never reach the scale where take occurs)), and the Service concurs in writing.

Formal consultation under ESA Section 7(a)(2): For Federally listed threatened and endangered species and Federally designated critical habitat, formal consultation with FWS or NMFS under Section 7(a)(2) of the ESA is triggered when: 1) the FAA determines that the proposed action " may affect" Federally listed species or designated critical habitat, unless the FWS or NMFS concur in writing that the proposed action is not likely to adversely affect any listed species or critical habitat, or 2) the FWS or NMFS does not concur with the agency's determination that the proposed action is not likely to adversely affect Federally listed species or designated critical habitat. Formal

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consultation is concluded with a Biological Opinion (No Jeopardy/Adverse Modification Opinion, including an

incidental take statement, or Jeopardy/Adverse Modificiation Opinion), as discussed below.

Conference under ESA Section 7(a)(4): If the proposed action is likely to adversely affect Federally proposed species or critical habitat, then conference is required for Federally proposed species and Federally proposed critical habitat, unless the Federal agency decides to include the analysis of effects on proposed species and proposed critical habitats in the formal consultation process. Conference can be useful in later expediting the consultation process when a proposed species is listed or proposed critical habitat is designated. For Federally proposed species and critical habitat, at the conclusion of conference, the Services will provide conservation recommendations. Conservation recommendations are discretionary agency activities.

Other statutes: Other statutes, such as the Marine Mammal Protection Act, may also apply depending upon the circumstances.

It may be assumed that there are no significant impacts on fish, wildlife, and plants if:

For Federally listed threatened and endangered species and designated critical habitat under the ESA:

(1) The reply from the FWS or NMFS following informal consultation indicates that the proposed action is not likely to adversely affect any listed species or critical habitat (i.e., the effects are completely beneficial, insignificant, or discountable); or

(2) A Biological Opinion issued by the FWS or NMFS following formal consultation states that the proposed action is not likely to jeopardize the continued existence of Federally listed threatened or endangered species in the affected area or result in the destruction or adverse modification of Federally designated critical habitat in the affected area (No Jeopardy/Adverse Modification Opinion). A No Jeopardy/Adverse Modification Opinion may include one or more reasonable and prudent alternatives to eliminate jeopardy. The incidental take statement, included in the No Jeopardy/Adverse Modification Opinion, provides nondiscretionary reasonable and prudent measures that are necessary and appropriate to minimize the level of incidental take and avoid jeopardy. Different levels of take and different reasonable and prudent measures may be specified for each reasonable and prudent alternative. (Formal consultation may be reinitiated when the amount or extent of incidental take is exceeded; new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; the action is modified in a manner causing effects to listed species or critical habitat not previously considered; or a new species is listed or critical habitat is designated that may be affected by the action.)

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For species not Federally listed as threatened or endangered and habitats not Federally designated as critical under the ESA:

The FWS, NMFS, or other Federal, State or Tribal agency responsible for protecting wildlife where there is an impact on a water resource indicate that the impacted area is human-dominated, or the impact is transient in nature, or the alteration would not result in a long-term or permanent loss of wildlife or water resources.

If, after these efforts, significant impacts are unavoidable, then the FAA official conducts further consultation and analysis with the Services and other Federal, State, Tribal, or local officials in the preparation of the EIS.

c. Analysis of Significant Impacts.

(1) General. The FAA will coordinate with the Services, other Federal, State, Tribal, or local wildlife agencies, and others as necessary to assess the potential impacts. If the proposed action affects water resources and thereby triggers the Fish and Wildlife Coordination Act, then the FAA considers the recommendations of the FWS, NMFS, other Federal agencies, and the State or Tribal wildlife agency and assures that further detailed analysis is performed. This may include:

(a) Use of aerial photographs and field reconnaissance.

(b) Determining the significance of impacted habitats including the importance and range of fauna and flora and the location of nesting and breeding areas.

(c) A more detailed analysis of other impact areas (e.g., noise, air quality, water quality).

(2) Federally listed threatened and endangered species and Federally designated criticat habitat. For Federally listed threatened and endangered species and Federally designated critical habitats, the FAA forwards to the Services the BA as required for major construction activities or supporting information as needed for other types of proposed actions with a request to initiate formal consultation under Section 7(a)(2) of the ESA. The BA may be included in an EA. If the FAA accepts an alternative proposed by the FWS or the NMFS or proposes another acceptable alternative, the FAA also may conclude that impacts are not significant. If neither of the above apply, the potential impact is considered significant. In the preparation of an EIS, the FAA requests the Services to be cooperating agencies on the basis of their jurisdiction. Further detailed analysis may consider:

(a) Further mitigation measures or action modifications.

(b) Further biological assessment.

(c) If the FWS or NMFS issues a Jeopardy/Adverse Modification Opinion, FAA may not proceed with the action unless the project is

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modified sufficiently to enable the Services to issue a No Jeopardy/Adverse Modification Opinion, or the action is exempted under 50 CFR Part 451.

8. FLOODPLAINS AND FLOODWAYS

Statute	Regulation	Oversight Agency
Executive Order 11988, Floodplain Management	DOT Order 5650.2, Floodplain Management and Protection	Federal Aviation Administration
Appropriate State and local construction statutes		Federal Emergency Management Agency
		Appropriate State and local agencies

a. Requirements. Executive Order 11988 directs Federal agencies to take action to reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and restore and preserve the natural and beneficial values served by floodplains. DOT Order 5650.2 contains DOT's policies and procedures for implementing the executive order. Agencies are required to make a finding that there is no practicable alternative before taking action that would encroach on a base floodplain based on a 100-year flood.(7 CFR Section 650.250).

b. FAA Responsibilities. The FAA official will consult with State and local officials to determine the boundaries of floodplains near the site of the action. The Federal Emergency Management Agency (FEMA) maps are the primary reference for determining the extent of the base floodplain. If a floodplain designation is in question, FEMA or the Army Corps of Engineers will be contacted for information.

If the proposed action and reasonable alternatives are not within the limits of, or if applicable, the buffers of a base floodplain, that statement should be made. No further analysis is needed.

If the agency finds that the only practicable alternative requires siting in the base floodplain, a floodplain encroachment would occur and further environmental analysis is needed. The FAA shall, prior to taking the action, design or modify the proposed action to minimize potential harm to or within the base floodplain. The action is to be consistent with regulations issued according to Section 2(d) of E.O. 11988. The FAA shall also provide the public with an opportunitiy to review the encroachment through its public involvement process and any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document must state that an encroachment is anticipated.

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FAA's analysis shall also indicate if the encroachment would be a " significant encroachment," that is, if it would cause one or more of the following impacts:?

(1) The action would have a high probability of loss of human life.

(2) The action would likely have substantial, encroachment-associated costs or damage, including interrupting aircraft service or loss of a vital transportation facility (e.g., flooding of a runway or taxiway; important navigational aid out of service due to flooding, etc.); or

(3) The action would cause adverse impacts on natural and beneficial floodplain values.

If one or more of the alternatives under consideration includes significant floodplain encroachments, then any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document availability, shall note that fact.

When flood storage is displaced, the analysis should consider compensatory floodwater storage impacts on upstream property, or how that storage could affect aquatic or other biotic systems. Development project not causing higher flood elevations or altering flood storage could adversely affect beneficial or natural floodplain values.

Actions outside a base floodplain may adversely affect natural and beneficial floodplain resources. Consider impacts on natural and beneficial floodplain values, water pollution, increased runoff from impermeable surfaces, changes in hydrologic patterns, or induced secondary development. Mitigation to minimize such impacts is needed to comply with the applicable regulations. This mitigation may include: commiting to comply with special flood-related design criteria; elevating facilities above the base flood elevation; or minimizing fill placed in floodplains.

c. Significant Impact Thresholds. If a significant encroachment is involved that would result in notable adverse impacts on natural and beneficial floodplain values, preparation of an EIS is required. Mitigation measures for base floodplain encroachments may include commiting to special flood related design criteria, elevating facilities above base flood level, locating nonconforming structures and facilities out of the floodplain, or minimizing fill placed in floodplains.

d. Analysis of Significant Impacts. When the FAA prepares an EIS addressing significant impacts in this category, Federal, State, or local agencies with floodplain jurisdiction and expertise may become cooperating agencies. Further analysis includes the following as applicable to the action:

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(1) Further consideration of the practicability of any alternatives.

(2) Inclusion of all practicable measures in the design of the proposal to minimize harm and to restore and preserve the natural and beneficial floodplain values affected. Commitments to later compliance with special flood related design criteria or the imposition, in advance, of protective conditions may be warranted in some situations.

(3) Evidence that the action conforms to applicable State and/or local floodplain protection standards.

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9. HAZARDOUS MATERIALS AND SOLID WASTE

Statute	Regulation	Oversight Agency
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Community Environmental Response Facilitation Act of 1992) [42 U.S.C. 9601- 9675]	40 CFR Parts 300, 302, 373, 355, 370, and 372 Executive Order 12856	Environmental Protection Agency
Pollution Prevention Act of 1990 [42 U.S.C. 1310- 13109]	CEQ Memorandum on Pollution Prevention and the National Environmental Policy Act, 1/12/93 (58 FR 6478)	Council on Environmental Quality
Toxic Substances Control Act (TSCA) [15 U.S.C. 2601- 2692] [PL 94-550]	40 CFR Parts 761 and 763	
Resource Conservation and Recovery Act of 1976 (RCRA) [42 U.S.C. 6901-6992(k)] [PL 94-580] (As amended by the Solid Waste Disposal Act of 1980, [PL 96-482] As amended by the Hazardous and Solid Waste Amendments of 1984, [PL 98-616] and the Federal Facility Compliance Act of 1992)	40 CFR Parts 240 - 280	

a. **Requirements**. Four primary laws have been passed governing the handling and disposal of hazardous materials, chemicals, substances, and wastes. The two statutes of most importance to the FAA in proposing actions to construct and operate facilities and navigational aids are the Resource Conservation and Recovery Act (RCRA) (as amended by the Federal Facilities Compliance Act of 1992) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (also known as Superfund). RCRA governs the generation, treatment, storage, and disposal of hazardous wastes. CERCLA provides

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for cleanup of any release of a hazardous substance (excluding petroleum) into the environment. FAA actions to fund, approve, or conduct an activity may require consideration of hazardous material and solid waste impacts in NEPA documentation. NEPA documents prepared in support of project development should include an appropriate level of review regarding the hazardous nature of any materials or wastes to be used, generated, or disturbed by the proposed action, as well as the control measures to be taken. The CEQ memorandum on pollution prevention and the National Environmental Policy Act encourages early consideration, for example, during scoping, of opportunities for pollution prevention. FAA should, to the extent practicable, include pollution prevention considerations in the proposed action and its alternatives; address pollution prevention in the environmental consequences section; and disclose in the record of decision the extent to which pollution was considered. A discussion of pollution prevention may also be appropriate in an EA. Consideration of these issues in evaluating the effects of proposed actions should begin with an understanding of the following three terms:

Hazardous Material - any substance or material that has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce (49 CFR Part 172, Table 172.101). This includes hazardous substances and hazardous wastes.

Hazardous Waste - under the Resource Conservation and Recovery Act (RCRA) a waste is considered hazardous if it is listed in, or meets the characteristics described in 40 CFR Part 261, including ignitability, corrosivity, reactivity, or extraction procedure toxicity.

Hazardous Substance - any element, compound, mixture, solution, or substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and listed in 40 CFR Part 302. If released into the environment, hazardous substances may pose substantial harm to human health or the environment.

b. FAA Responsibilities. The FAA must comply with applicable pollution control statutes and requirements that may include, but may not be limited to, those listed in Appendix 2 of Order 1050.10B, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

In accordance with Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, an Environmental Due Diligence Audit (EDDA) shall be conducted to evaluate subject properties for potential hazardous substances contamination that could result in future FAA liabilities.

FAA actions to fund or approve airport layout plans for terminal area development may also require consideration of solid waste impacts in NEPA documentation. A preliminary review should indicate if the projected quantity or type of solid waste generated or method of collection or disposal will be appreciably different than would be the

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case without the action. Special attention shall be given to the control of hazardous waste.

NEPA documents should include appropriate information as described below.

(1) The environmental document should demonstrate that the FAA (or airport sponsor as appropriate) has determined whether hazardous wastes as defined in 40 CFR Part 261 (RCRA) will be generated, disturbed, transported or treated, stored or disposed, by the action under consideration. If so, management of these wastes is regulated by 40 CFR Parts 260-280 and transportation is governed by 49 CFR Parts 171-199. To the extent that the existence of hazardous wastes affects phasing of project construction, analysis of alternatives and consideration of mitigation measures, the means for compliance with applicable regulations must be discussed. It may be helpful to briefly discuss the means for compliance with applicable regulations in the NEPA documentation. For example, operators of activities that would cause hazardous waste must obtain a RCRA hazardous waste generator identification number from EPA or an authorized State.

(2) The document should analyze alternatives considering applicable permitting requirements, and in the case of direct actions or funding, Federal and State guidelines and regulations on procurement of recycled or recyclable productions, the source separation and recycling of recyclable products and solid waste storage, transport, or disposal.

(3) The document should analyze the cost and feasibility of alternatives regarding the avoidance or use of hazardous materials, hazardous wastes, recycled materials, recyclable products, and any related need for permits, remediation, storage, transport, or disposal.

(4) The document should indicate the presence of any sites within the action area listed or under consideration for listing on the National Priorities List (NPL) established by EPA in accordance with CERCLA. NEPA documentation should include a discussion of the impact of any NPL or NPL candidate sites on the action and/or impacts of the action on any NPL or NPL candidate sites. NEPA documentation should also identify sites in the vicinity that have been designated RCRA Solid Waste Management Units (SWMUs) and that may impact or be impacted by the action.

(5) The NEPA documentation should reflect that consultation with the appropriate State agency (or EPA) has been initiated. If a formal agreement has been reached, it should be included in the document itself or incorporated by reference, as appropriate. In many cases, construction may not commence until a formal agreement between the FAA (or action sponsor) and the State agency (or EPA) has been executed.

(6) The NEPA documentation, i.e., EIS, Record of Decision, and FAA construction contracts should include a provision that in the event previously unknown contaminants are discovered during construction, or a

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spill occurs during construction, work should stop until the National Response Center is notified. Their number is (800) 424-8802.

c. Analysis of Significant Impacts. Generally, additional information or analysis is needed only if significant problems are anticipated with respect to meeting the applicable local, State, or Federal laws and regulations on hazardous or solid waste management. Additional data may include results of any further consultation with affected agencies and measures to be taken to minimize the impacts. Disposal that would adversely affect water quality or other environmental resources may be discussed under those sections of the environmental analysis addressing affected resources, with the hazardous material section cross-referencing those sections. Actions that involve property listed (or potentially listed on) the NPL are considered significant by definition. In other cases, only a significant unresolved issue may warrant additional analysis in an EIS.

The cost and feasibility of any necessary remediation of hazardous waste contamination should be considered and for guidance on considering existing environmental contamination issues associated with proposed actions to acquire land consult Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions.

For guidance on design, construction, and operational compliance of FAA facilities with pollution control statutes, the following FAA orders should be consulted:

(1) Order 1050.10B, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

(2) Order 1050.14A, Polychlorinated Biphenyls (PCB) in the National Airspace System.

(3) Order 1050.15A, Underground Storage Tanks at FAA Facilities.

(4) Order 1050.18, Chlorofluorocarbons and Halon Use at FAA Facilities.

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10. HISTORICAL, ARCHITECTURAL, ARCHEOLOGICAL, AND CULTURAL RESOURCES

[THIS SECTION REFLECTS THE MAJOR REVISIONS TO 36 CFR PART 800 ISSUED MAY 18, 1999]

Statute	Regulation	Oversight Agency
Laws Governing National Historic Preservation Programs and National Historic Landmarks:		
Historic Sites Act of 1935 [16 U.S.C. 461-467] [PL 74-292 (1935)]		National Park Service
National Historic Preservation Act of 1966, as amended [16 U.S.C. 470, 470 note] [PL 102-575 (1992)]	36 CFR Parts 60, 61, 62.1 (National Natural Landmarks),63, 65,65.1 (National Historic Landmarks), 68, 73 (World Heritage Program, 78 36 CFR Part 800, as revised, May 18, 1999, effective June 17, 1999	National Park Service Advisory Council on Historic Preservation State Historic Preservation Officer
Statute	**Regulation**	**Oversight Agency**
Laws Governing the Federal Archeology Program:		
Antiquities Act of 1906 [16 U.S.C. 431, 432, 433] [PL 59-209 (1906)]	43 CFR Part 3 25 CFR Part 261	Department of Interior
Archaeological and Historic Preservation Act of 1974, as amended [16 U.S.C. 469-469c] [PL 89-665]	Guidelines for Archeology and Historic Preservation: Standards and Guidelines (DOI), (48 FR 44716, September 29, 1983) 36 CFR Part 68	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service

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Statute	Regulation	Oversight Agency
Laws Governing the Federal Archeology Program:		
Archaeological Resources Protection Act of 1979, as amended [16 U.S.C. 470aa-470mm] [PL 96-95 (1979)]	43 CFR Parts 3 and 7 36 CFR Part 79 25 CFR Parts 261 and 262	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service
Native American Graves Protection and Repatriation Act of 1990 [25 U.S.C. 3001] [PL 101-601 (1990)]	43 CFR Part 10 25 CFR Section 262.8 36 CFR Part 79	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service
Other Major Federal Historic Preservation Laws		
American Indian Religious Freedom Act of 1978 [42 U.S.C. 1996, 1996 note] [PL 95-341 (1978)]	43 CFR Sections 7.7 and 7.32 25 CFR Section 262.7	
Executive Order 13007, Indian Sacred Sites		
Executive Order 11593, Protection and Enhancement of the Cultural Environment		

a. Requirements. Several laws apply to this category of impact. The major laws include the National Historic Preservation Act (NHPA) of 1966, as amended, which establishes the Advisory Council on Historic Preservation (ACHP). Section 110 governs Federal agencies responsibilities to preserve and use historic buildings; identify, evaluate, and nominate eligible properties under the control or jurisdiction of the agency to the National Register; give full consideration in planning to potentially affected historic properties; consult on preservation-related activities with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector; and comply with the consultation and public notice requirements of Section 106, the professional standards of Section 112, and the confidentiality requirements of Section 314.

The Archaeological Resources Protection Act (ARPA) is triggered by the presence of archeological resources on Federal or Indian lands. The

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Archeological and Historic Preservation Act of 1974 provides for the survey, recovery, and preservation of significant scientific, pre-historical, historical, archeological, or paleontological data when such data may be destroyed or irreparably lost due to a Federal, Federally licensed, or Federally funded action. The DOI's *Standards and Guidelines* were published in the Federal Register (48 FR 44716, September 29, 1983) to advise Federal agencies on the manner in which this latter law will be implemented. Requirements are specified under subparagraph (c) of the Archeological and Historic Preservation Act of 1974.

The Native American Graves Protection and Repatriation Act (NAGPRA) is triggered by the possession of human remains or cultural items by a Federally funded repository or by the discovery of human remains or cultural items on Federal or tribal lands and provides for the inventory, protection, and return of cultural items to affiliated Native American groups. Most of the historic and archeological preservation laws require consultation with Native Americans. Permits are required for intentional excavation and removal of Native American cultural items from Federal or tribal lands. The Act includes provisions that, upon inadvertent discovery of remains, the action will cease in the area where the remains were discovered, and the FAA official will protect the materials and notify the appropriate land management agency. For additional information see the Advisory Council's policy statement of June 11, 1993, on *Consultation with Native Americans Concerning Properties of Traditional Religious and Cultural Importance*.

The Antiquities Act of 1906 was the first general law providing protection for archeological resources. It protects all historic and prehistoric sites on Federal lands and prohibits excavation or destruction of such antiquities without the permission (antiquities permit) of the Secretary of the department having jurisdiction. It also authorizes the President to declare areas of public lands as national monuments and to reserve or accept private lands for that purpose.

The Historic Sites Act of 1935 declares as national policy the preservation for public use of historic sites, buildings, objects, and properties of national significance. It gives the Secretary of the Interior authority to make historic surveys, to secure and preserve data on historic sites, and to acquire and preserve archeological and historic sites. This act also establishes the National Historic Landmarks program for designating properties having exceptional value in commemorating or illustrating the history of the United States. It gives the Secretary of the Interior broad powers to protect nationally significant historic properties, including the Secretary's authority to establish and acquire nationally significant historic sites.

The American Indian Religious Freedom Act of 1978 requires consultation with Native American groups concerning proposed actions on sacred sites on Federal land or affecting access to sacred sites. It establishes Federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their right to free exercise of their religion. It allows these peoples to access sites, use and possess sacred objects, and freedom to worship through ceremonial and

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traditional rites. In practical terms, the act requires Federal agencies to consider the impacts of their actions on religious sites and objects that are important to Native Americans, including Alaska Natives, and Native Hawaiians, regardless of the eligibility for the National Register of Historic Places.

Executive Order 11593, Protection and Enhancement of the Cultural Environment, (36 FR 8921, May 13, 1971; reprinted in 16 U.S.C. 470 note), and Order DOT 5650.1, Protection and Enhancement of the Cultural Environment, November 20, 1972, require that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historic, architectural, or archaeological significance.

Permits/Certificates. Various statutes, such as the Antiquities Act of 1906 (Section 3), NAGPRA (Section 3(c)), and ARPA (Section 4), require permits.

b. FAA Responsibilities. The State or Tribal Historic Preservation Officer (SHPO/THPO) and other appropriate sources, must be consulted for advice early in the environmental process. See 36 CFR Part 800 which governs the Section 106 consultation process under NHPA and encourages coordination between Section 106 and other statutes and with environmental and planning reviews under State or local ordinances. (Undertakings that have the potential to affect historic properties under Section 106 constitute an extraordinary circumstance requiring an EA even if the project normally qualifies as a categorical exclusion under NEPA. Findings of no historic properties present or affected or no historic properties adversely affected under NHPA Section 106 support determinations of no use (either constructive or physical) under DOT Section 4(f)). See also specific requirements in 36 CFR Part 800 and ACHP guidance for public involvement during the consultation process.

The FAA official determines whether the proposed action is an "undertaking," as defined in 36 CFR 800.16(y) and whether it is a type of activity that has the potential to cause effects on historic properties. If the agency determines, and the SHPO/THPO concurs, that the action is not an undertaking or is an undertaking but does not have the potential to an effect on historic properties, a historical or cultural resource survey is not necessary and the FAA may issue a determination that the action is not an undertaking or has no effect. If the action is an undertaking and may have an effect, then the first step is to identify the area of potential effect (APE) and the historical or cultural resources within it (see *Secretary's Standards and Guidelines for Identification*).

<u>Determination of Area of Potential Effect (APE):</u> It is the FAA's responsibility to determine the APE. This determination is made generally in consultation with the appropriate SHPO(s)/THPO(s). APE means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties are subsequently identified within the APE. The ACHP and the SHPO/THPO may provide technical advice.

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Identification and Evaluation Process: The FAA must survey the APE to identify properties potentially eligible or listed on the National Register of Historic Places. If any eligible or listed property is identified within the area of the proposed action's APE, the ACHP's regulations, *Protection of Historic Properties* (36 CFR Part 800) will be consulted and followed. Additional information may be obtained from the FAA's Federal (Historic) Preservation Officer in the Office of Environment and Energy and through cultural resources surveys in the APE.

Traditional cultural places (TCPs) may be eligible for listing on the National Register of Historic Places and thus may become the subject of Section 106 consultation following the procedures in 36 CFR part 800 and National Park Service Bulletin 38 on " Identifying Traditional Cultural Places." The National Park Service Bulletin 38 identifies the National Register criteria for determining whether a place qualifies as a TCP under the National Historic Preservation Act. (Other Bulletins are available to assist in identifying other types of historic properties. Many of these are on file with the FAA Federal Preservation Officer in the Office of Environment and Energy.) The FAA may obtain necessary information to apply the criteria by informally consulting. If informal consultation does not resolve issues relating to identification of properties as National Register eligible or the determination of effect, then the FAA must follow the procedures for identification and analysis outlined in the Secretary of the Interior's Standards and Guidelines.

Note that if a TCP is also a sacred site for a tribe, regardless of whether it is the subject of Section 106 consultation, the FAA must consult the tribe under the American Indian Religious Freedom Act of 1978, and the E.O. 13007, Indian Sacred Sites.

If human remains occur at the site, NAGPRA applies. Various archeological statutes, including ARPA and State, local and tribal laws and ordinances may also apply. Criminal laws and the need to preserve evidence may also be involved when human remains are found. Consistent with FAA security directives, contact the FAA Federal Historic Preservation Officer, SHPO, or THPO to coordinate with the designated counterpart Federal, State, or Tribal law enforcement officials if criminal activity is suspected.

If the SHPO/THPO concurs with the FAA's determination regarding eligibility of a resource for inclusion in the National Register, then the consultation moves to the next step. If the SHPO/THPO does not concur, the FAA must seek a determination of eligibility from the Keeper of the National Register (DOI). The Keeper of the National Register is responsible for issuing formal determination of National Register eligibility when FAA and the SHPO/THPO can't agree on a resource's eligibility for the National Register. (See also 36 CFR Part 63.) Any person can request ACHP review of an agency's findings related to identification of historic properites; evaluation of historic significance; and finding that no historic properties are present. As a result of such a request, the ACHP may request the FAA to seek a formal determination from the Keeper. This is called a " Determination of Eligibility" (DOE).

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If no properties have been identified within the APE (i.e., the area or areas in where the undertaking has the potential to alter the characteristics that qualify or may qualify a property for inclusion in the National Register of Historic Places), and no resources have been identified that are subject to ARPA, NAGPRA, American Indian Religious Freedom Act (AIRFA), Antiquites Act, Section 303 of the amended Department of Transportation Act (known as Section 4(f)), the Archeological and Historic Preservation Act, E.O. 13007, Indian Sacred Sites, or other laws covering specific types of cultural resources, then no further analysis is needed.

Effects Finding: It is the FAA's responsibility to make a finding of " no historic properties present or affected" or " no historic properties adversely affected" after applying the criteria of effect to historic properties in the APE and considering the views of the consulting parties and the public.

To assess effects of the undertaking on identified historic properties located in the area of potential effect, the FAA applies the Criteria of Effect listed in 36 CFR Part 800 in consultation with the SHPO/THPO. If the criteria in 36 CFR Part 800 indicate and the SHPO/THPO agrees that the action would not affect any listed or eligible property, then a finding of no historic properties present or affected accompanied by the SHPO's/THPO's letter and any documentation 36 CFR Part 800 requires must be sent to the ACHP with a notice to that effect and be included in the environmental document.

No agreement on findings of no effect or no adverse effect: If the SHPO(s)/THPO(s) disagree with the FAA's finding of no historic properties present or affected or no historic properties adversely affected (No Adverse Effect), then the process moves to the next stage in which an adverse effect is presumed and negotiations are begun to identify mitigation measures.

If the SHPO/THPO disagrees with the FAA's finding of no historic properties present or affected or no historic properties adversely affected (No Adverse Effect), then the dispute may be referred to the ACHP. Supporting documentation for a finding of No Adverse Effect together with the written views of the SHPO/THPO will be forwarded to the ACHP for review by the Executive Director. Under 36 CFR Part 800, any person can request ACHP review of an agency finding of No Adverse Effect. If ACHP does not agree with a No Adverse Effect finding and the FAA does not accept ACHP recommended changes, an Adverse Effect finding occurs.

If an adverse effect on properties is indicated, a finding of Adverse Effect and the Memorandum of Agreement (MOA) will be included in the EA or EIS with supporting documentation. If the consulting parties agree on an alternative to avoid or satisfactorily mitigate adverse effects, a MOA will be executed specifying how the proposed action will proceed to avoid or mitigate the adverse effects. For more information concerning drafting MOA's, consult the ACHP's *Preparing Agreement Documents* (PAD). A finding of Adverse Effect triggers further consultation among Federal

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agency, SHPO/THPO, and other interested parties to consider means to avoid or minimize effects on historic properties. Mitigation can include data collection according to the Secretary's Guidelines prior to destruction or modification of the resource. The ACHP must be notified of the potential for adverse effect and may participate in consultation. The results of consultation concerning the action's adverse effects on an eligible or listed property are included in the MOA. If a finding of Adverse Effect cannot be avoided through mitigation or action modification, further consultation and analysis will be necessary.

Planning for Unanticipated Discovery: In projects especially involving excavation or ground-disturbing activities which may result in unanticipated discovery of potentially eligible historic or archeological resources, the FAA should develop a plan for addressing impacts on these properties and include this plan in the MOA, or the EA or EIS prepared for the action. The MOA may include provision for unanticipated discovery and include provisions to halt construction. When the FAA has developed such a plan and then discovers historic properties after completing Section 106 requirements, the FAA follows the plan that was approved during the Section 106 consultation and thereby meets its Section 106 requirements regarding the newly discovered properties. The FAA should include a commitment in the EA/FONSI or EIS/ROD to halt construction in the immediate vicinity of the discovered properties and implement the plan if new or additional historic properties are discovered after work has begun on a project. If the FAA has not prepared a plan to address discovery of unanticipated historic properties, then the FAA must afford the SHPO/THPO, the ACHP, and interested parties an opportunity to comment on effects to these newly discovered properties in one of several ways. See 36 CFR Part 800 for additional information.

Programmatic agreements: When an undertaking is going to be repeated many times, e.g., the decommissioning of a particular type of building, the FAA may negotiate a programmatic agreement (PA) with the ACHP. A PA may also be negotiated with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) if the undertaking will be repeated in several different States (see 36 CFR 800). The FAA may work through the National Association of Tribal Historic Preservation Officers (NATHPO) to facilitate coordination with tribes. A PA may also be negotiated with the ACHP and the NCSHPO and counterpart tribal organization, if an undertaking is complex, wide in scope, and the effects are not known precisely. Typically, the FAA must be able to describe the undertaking, including the timeframe and whether the undertaking will be staged. For example, as studies are completed, the APE and the types of expected effects as well as the potential for mitigation must be identified before the ACHP will agree to the PA. For more information see 36 CFR 800.13 and the ACHP's *Preparing Agreement Documents*.

The FAA may proceed without agreement on mitigation, i.e., without a MOA or PA, but first the FAA must seek ACHP comment. The ACHP can send the request back to the FAA with the comment that it is premature to request ACHP comments until the FAA can provide more documentation. If the FAA has made a good faith attempt to identify eligible properties, determine

effects, and negotiate an agreement on mitigation but has determined that agreement is unlikely, the ACHP may convene a panel of ACHP members and hold public hearings before preparing its comments. Typically, the ACHP will ask the FAA to pay for the cost of the panel's travel and other expenses related to the hearings. ACHP comments are directed to the FAA Administrator. The FAA Administrator must then respond to the ACHP comments before proceeding. This responsibility cannot be delegated.

c. Significant Impact Thresholds. The consultation process includes consideration of feasible and prudent alternatives to avoid adverse effects on National Register listed or eligible properties; of mitigation measures; and of accepting adverse effects. The FAA has the final judgment on whether the appropriate action choice is an EIS or a FONSI. Advice from the ACHP and the SHPO/THPO may assist the FAA in making this judgment.

d. Analysis of Significant Impacts. If the consulting parties agree that the alternative would not avoid or mitigate the adverse impacts but that it is in the public interest to proceed with the proposed action, a MOA shall be executed. This MOA may specify recording, salvage, or other measures that shall be taken to minimize adverse impacts before the proposed action proceeds. It is likely that, in this circumstance, the impact on National Register or eligible properties will be considered significant and require the preparation of an EIS.

The FAA makes the final decision on whether to prepare an EIS. If the FAA is already preparing a draft EIS because of other significant impacts, this draft EIS should discuss impacts on historic resources and can be submitted as the preliminary case report, if appropriately identified as such and if the FAA so requests in the cover letter transmitting the draft EIS and requesting comments. Unless accompanied by such a request, circulation of the draft EIS does not constitute a request for ACHP comments pursuant to Section 106 of NHPA and 36 CFR Part 800.

The ACHP may be a cooperating agency when the preparation of an EIS is needed to address significant impacts on historic, archeological, and cultural resourcrs. Information developed for and during the consultation process will be sufficient for purposes of EIS documentation. The final EIS shall include comments of the ACHP and a copy of any MOA. (If a MOA has been executed prior to circulation of a draft EIS, the MOA shall be included in the draft). Within 90 days after carrying out the terms of a MOA, the FAA is required to report to all signatories on the actions taken to comply with the MOA.

11. LIGHT EMISSIONS AND VISUAL IMPACTS

Statute	Regulation	Oversight Agency
See requirements below		

a. Requirements. A description of potential impacts due to light emissions or visual impacts associated with a Federal action may be necessary. Consideration should be given to impacts on people and properties covered by Section 106 or DOT Section 303 (formerly, 4(f)).

Permits/Certificates: Not Applicable.

b. FAA Responsibilities.

Light Emissions. The FAA official considers the extent to which any lighting associated with an action will create an annoyance among people in the vicinity or interfere with their normal activities. Because of the relatively low levels of light intensity compared to background levels associated with most air navigation facilities (NAVAIDS) and other airport development actions, light emissions impacts are unlikely to have an adverse impact on human activity or the use or characteristics of the protected properties. Information will be included in the environmental document whenever the potential for annoyance exists, such as site location of lights or light systems, pertinent characteristics of the particular system and its use, and measures to lessen any annoyance, such as shielding or angular adjustments.

Visual Impacts. Visual, or aesthetic, impacts are inherently more difficult to define because of the subjectivity involved. Aesthetic impacts deal more broadly with the extent that the development contrasts with the existing environment and whether the community jurisdictional agency considers this contrast objectionable. Public involvement and consultation with appropriate Federal, State, local, and tribal agencies may help determine the extent of these impacts. The art and science of analyzing visual impacts is continuously improving and the FAA official should consider, based on scoping or other public involvement, the degree to which available tools should be used to more objectively analyze subjective responses to proposed visual changes.

c. Analysis of Significant Impacts. When an action is determined to have significant light or visual-related impacts, use the following applicable instructions:

Light Emissions. The EIS description of potential annoyance from airport lighting and measures to minimize the effects should be documented in a similar fashion in an EIS to that in an EA. Further consideration may concentrate on previously unconsidered mitigation measures and alternatives. It is possible that the FAA official will judge that a special lighting study is warranted.

Visual Impacts. The impact discussion will normally include appropriate presentation of the application of design, art, architecture and

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landscape architecture in mitigating adverse visual and other impacts and encouraging enhancement of the environment.

12. NATURAL RESOURCES AND ENERGY SUPPLY

Statute	Regulation	Oversight Agency
See requirements below		

a. Requirements. FAA Order 1053.1, Policies and Procedures for Energy Planning and Conservation, provides for assessing energy demands.

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. For purposes of the EA, the proposed action will be examined to identify any proposed major changes in stationary facilities or the movement of aircraft and ground vehicles that would have a measurable effect on local supplies of energy or natural resources. If there are major changes, power companies or other suppliers of energy will be contacted to determine if projected demands can be met by existing or planned source facilities. The use of natural resources other than for fuel need be examined only if the action involves a need for unusual materials or those in short supply. Therefore, evaluation of significant energy use for major construction actions is important.

For most actions, changes in energy demands or other natural resource consumption will not result in significant impacts. If the EA identifies problems such as demands exceeding supplies, additional analysis may be required in an EIS. Otherwise, it may be assumed that impacts are not significant.

c. Analysis of Significant Impacts. Analysis in an EIS includes detail needed to fully explain the degree of the problem and measures to be taken to minimize the impact. Measures such as more efficient airfield design, ground access improvements, or energy efficient building design will be considered and described where applicable and incorporated in the action to the extent possible. The Department of Energy (DOE) may be a cooperating agency and be of assistance in determining additional specific analysis needed and in judging the seriousness of impacts.

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13. NOISE

Statute	Regulation	Oversight Agency
49 U.S.C. § 47501-47507 (Aviation Safety and Noise Abatement Act of 1979, as amended) 49 U.S.C. § 40101, et seq., as amended by PL 103-305 (Aug. 23, 1994) (The Federal Aviation Act of 1958) The Control and Abatement of Aircraft Noise and Sonic Boom Act of 1968 49 U.S.C. § 47101, et seq., as amended by PL 103-305 (Aug. 23, 1994) (The Airport and Airway Improvement Act) 49 U.S.C. § 2101 et seq. (Airport Noise and Capacity Act of 1990) 49 U.S.C. § 44715 (The Noise Control Act of 1972)	14 CFR Part 150 Noise Control and Compatibility Planning for Airports Advisory Circular, 150/5020 14 CFR Part 161 Notice and Approval of Airport Noise and Access Restrictions	Federal Aviation Administration (FAA) EPA

a. Requirements. For aviation noise analysis, the FAA has determined that the cumulative noise energy exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day/night average sound level (DNL). An initial noise analysis during the environmental assessment process should be accomplished to determine whether further, more detailed analysis is necessary.

Permits/Certificates. Not applicable.

b. FAA Responsibilities. If significant noise impacts are expected, the FAA official must prepare a detailed noise analysis as part of an EIS in accordance with the following requirements. An EIS need not be prepared if the proposed action incorporates mitigation that reduces the noise impact to below significant noise impact threshold levels.

All detailed noise analyses must be performed using the most current version of the FAA's Integrated Noise Model (INM) and/or Heliport Noise Model (HNM) to develop noise exposure contours at and around airports and heliports. Use of an equivalent methodology and computer model must receive prior written approval from the FAA's Office of Environment and Energy (AEE).

EA and EIS preparers will provide input documentation with one copy of the INM/HNM input files used in the noise analyses and the corresponding

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case echo reports to the FAA official on electronic media specified by that official. All computer model input data should be collected early in the environmental process and should reasonably reflect current and forecasted conditions relative to the proposed action and alternatives

All noise analyses must be performed using the FAA's INM and/or HNM standard and default data. Preceedence evaluation with FAA screening methodologies e.g., Area Equivalent Method (AEM) and Air Traffic Noise Screening (ATNS), may be appropriate. Use of equivalent methodologies must receive prior written approval from AEE. If equivalent methodologies are approved, a description of additional, non-standard, or non-default data must be submitted along with a copy of AEE's approval.

c. Significant Impact Thresholds. FAA has determined that a significant noise impact would occur if a detailed noise analysis indicates that the proposed action results in an increase within the DNL 65 dB contour of DNL 1.5 dB or greater on any noise sensitive area.

d. Analysis of Significant Impacts. For proposed actions which result in a general overall increase in daily aircraft operations or the use of larger/noisier aircraft, as long as there are no changes in ground tracks or flight profiles, the initial analysis may be performed using the FAA's Area Equivalent Method (AEM) computer model. The time of day is also part of the equation used in the AEM method. If the AEM calculations indicate that the proposed action would result in less than a 17 percent (approximately a DNL 1 dB) increase in the DNL 65 dB contour area, it may be concluded that there would be no significant impact over noise sensitive areas and that no further noise analysis is required. If the AEM calculations indicate an increase of 17 percent or more, or if the proposed action is such that use of the AEM is not appropriate, then the proposed action must be analyzed using the INM or HNM to determine if significant noise impacts will result.

The determination of significance must be obtained through the use of INM or HNM noise contours and/or grid point analysis along with local land use information and general guidance contained in Appendix A of 14 CFR Part 150. Special consideration may need to be given to whether Part 150 land use categories are appropriate for evaluating noise impact on properties protected under Section 4(f) of the DOT Act (recodified as 49 U.S.C. 303).

In accordance with the 1992 FICON (Federal Interagency Committee on Noise) recommendations, examination of noise levels below DNL 65 dB may be required if determined to be appropriate after application of the FICON screening procedure (FICON p.3-5). If screening shows that noise sensitive areas at or above DNL 65 dB will have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise-sensitive areas between DNL 60-65 dB having an increase of DNL 3 dB or more due to the proposed action. If the DNL 65 dB screening calls for further analysis between DNL 60-65 dB, the FAA shall conduct a supplemental noise analysis of noise sensitive areas between 60-65 dB to identify those areas projected to have an increase of DNL 3 dB or more as a

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result of the action. The FAA then uses this information during its consideration of potential mitigation for those areas (FICON p. 3-7).

The INM or HNM will be used to produce the following information:

(1) Noise exposure contours at the DNL 75 dB, DNL 70 dB, and DNL 65 dB levels.

(2) Grid point analysis of areas within the DNL 65 dB contour to identify noise sensitive areas where noise will increase by DNL 1.5 dB.

(3) Grid point analysis of areas within the DNL 60-65 dB contours to identify noise sensitive areas where noise will increase by DNL 3 dB only when DNL 1.5 dB increases are documented within the DNL 65 dB contour.

The noise analysis will be conducted to reflect current conditions and forecast conditions for all reasonable alternatives, including the preferred and no action alternatives. This analysis should include maps, aerial photographs, and other means to depict land uses within the noise impact area. The addition of flight tracks is helpful in illustrating where the aircraft normally fly. Illustrations shall be large enough and clear enough to be readily understood.

Differences in the DNL contours and grid point analysis will be determined by comparing the following modeling scenarios:

(1) Current conditions versus the proposed action, and

(2) Future conditions with and without the proposed action. Future conditions will be examined for a period at least 5 years beyond when the proposed action occurs, or is constructed.

If the above comparisons show a DNL 1.5 dB or greater increase over a noise sensitive area within the DNL 65 dB contour, a level of significant noise impact has been reached.

The following information will be disclosed in the EIS as a minimum for each modeling scenario that was analyzed:

(1) The number of people living within each noise contour in or above DNL 65 dB by community, including the net increase or decrease in the number of people exposed to that level of noise. (Use of maps that depict population and streets to location a community or noise sensitive area is recommended.)

(2) The number of people that would be included in the DNL 65 dB contour as a result of the proposed action, and the number of people taken out of the DNL 65 dB contour by the proposal.

(3) The location and number of schools, churches, parks, recreation areas, wildlife refuges, and other noise sensitive areas within the DNL 65 dB contour.

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(4) Mitigation measures in effect or proposed and there relationship to the proposal.

If conditions warrant, additional analysis to supplement DNL may be necessary and will be considered on a case-by-case basis. Supplemental noise analyses are most often used to determine aircraft noise impacts at specific noise-sensitive locations or for noise-sensitive situations.

If the proposal is the result of a recommended noise mitigation measure included in an FAA-approved 14 CFR Part 150 noise compatibility program, the noise analysis developed in the program will be incorporated in the EA or EIS and will be considered sufficient for noise analysis purposes.

14. SECONDARY (INDUCED) IMPACTS

Statute	Regulation	Oversight Agency
See requirements below		

Major development proposals often involve the potential for induced or secondary impacts on surrounding communities. When such potential exists, the EA shall describe in general terms such factors. Examples include: shifts in patterns of population movement and growth; public service demands; and changes in business and economic activity to the extent influenced by the airport development. Induced impacts will normally not be significant except where there are also significant impacts in other categories, especially noise, land use, or direct social impacts. In such circumstances, an EIS may be needed to analyze.

15. SOCIOECONOMIC IMPACTS

Statute	Regulation	Oversight Agency
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601] [PL 91-528]	FAA Advisory Circular 150/5100-17 49 CFR Part 24 FAA Order 5100.37	
(As amended by the Surface Transportation and Uniform Relocation Act Amendments of 1987) [PL 100-117]		
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	DOT Order 5610.2	

a. Requirements. If acquisition of real property or displacement of persons is involved, 49 CFR Part 24 implementing the Uniform

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Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended must be met. Otherwise, the FAA, to the fullest extent possible, observes all local and State laws, regulations, and ordinances concerning zoning, transportation, economic development, housing, etc. when planning, assessing, or implementing the proposed action. (This requirement does not cover local zoning laws, set-back ordinances, and building codes because the Federal government is exempt from them). Additional requirements and responsibilities are established by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. (See DOT Order 5610.2, Environmental Justice).

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. The FAA official consults with local transportation, housing, and economic development, relocation and social agency officials, and community groups regarding the social impacts of the proposed action. The principal social impacts to be considered are those associated with relocation or other community disruption, transportation, planned development, and employment. The environmental document provides estimates of the numbers and characteristics of individuals and families to be displaced, the impact on the neighborhood and housing to which relocation is likely to take place, and an indication of the ability of that neighborhood to provide adequate relocation housing for the families to be displaced. The environmental document includes a description of special relocation advisory services to be provided, if any, for the elderly, handicapped, or illiterate regarding interpretation of benefits or other assistance available.

c. Significant Impact Thresholds. Factors to be considered in determining impact in this category include, but are not limited to, the following:

(1) Extensive relocation of residents is required, but sufficient replacement housing is unavailable.

(2) Extensive relocation of community businesses, and that relocation would create severe economic hardship for the affected community(ies).

(3) Disruptions of local traffic patterns that substantially reduce the levels of service of the roads serving the airport and its surrounding community(ies).

(4) A substantial loss in community tax base.

d. Analysis of Significant Impacts. This category is triggered when the potential for significant impact exists, because of relocation impacts and any adverse and disproportionately high impact on minority or low income communities, other community disruption, is identified. In these cases, additional analysis is needed to describe the degree of impact and measures to minimize such adverse effects. Such actions do not always trigger preparation of an EIS preparation.

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If an insufficient supply of general available relocation housing is indicated, a thorough analysis of efforts made to remedy the problem will be reflected in the EIS including, if necessary, provision for housing of last resort as authorized by Section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. If business relocation would cause appreciable economic hardship on the community, if significant changes in employment would result directly from the action, or if community disruption is considered substantial, the EIS will include a detailed explanation of the effects and the reasons why significant impacts cannot be avoided.

When the EA indicates substantial induced or secondary effects directly attributable to the proposal, a detailed analysis of such effects will be included in the EIS. As pertinent and to the extent known or reasonably foreseeable, such factors as effects on regional growth and development patterns, and spin-off jobs created will be described.

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16. WATER QUALITY

Statute	Regulation	Oversight Agency
Federal Water Pollution Control Act, as amended, known as the Clean Water Act [33 U.S.C. 1344] [PL 92-500] (As amended by the Clean Water Floodplains Floodways Act of 1977) [33 U.S.C. 1252] [PL 95-217] Safe Drinking Water Act [42 U.S.C. 300f et seq.] Fish and Wildlife Coordination Act of 1980 [16 U.S.C. 661-666c] [PL 85-624, 72 Stat. 563]	40 CFR Parts 110-112, 116, 117, 122, 129, 136, and 403	Environmental Protection Agency
49 USC 47106(c)(1)(B), former Airport and Airways Improvement Act of 1982, Section 509(7)(A)		

a. Requirements. The Federal Water Pollution Control Act, as amended (commonly referred to as the Clean Water Act) provides the authority to establish water quality standards, control discharges, develop waste treatment management plans and practices, prevent or minimize the loss of wetlands, location with regard to an aquifer or sensitive ecological area such as a wetlands area, and regulate other issues concerning water quality.

If the proposed Federal action would impound, divert, drain, control, or otherwise modify the waters of any stream or other body of water, the Fish and Wildlife Coordination Act applies, unless the project is for the impoundment of water covering an area of less than ten acres. The Fish and Wildlife Coordination Act requires the responsible Federal official to consult with the Fish and Wildlife Service (FWS) and the applicable State agency to identify means to prevent loss or damage to wildlife resources resulting from the proposal.

If there is the potential for contamination of an aquifer designated by the Environmental Protection Agency (EPA) as a sole or principal drinking water resource for the area, the FAA official needs to consult with the EPA regional office as required by section 1424(e) of the Safe Drinking Water Act, as amended.

Permits/Certificates:

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(1) To comply with 49 USC 47106(c)(1)(b), formerly, Section 509(b)(7)(A) of the 1982 Airport Improvement Act, an airport sponsor proposing construction of a new airport, a new runway, or a major runway extension must obtain a water quality certificate from the State in which such airport projects would be located. The FAA can not approve these projects, unless the sponsor has obtained that certificate. Environmental documents prepared for these projects must contain evidence from the governor or the agency responsible for protecting water quality that the project would be located, designed, constructed, and operated in compliance with applicable water quality standards.

Also, regardless of the type of airport project proposed, project proponents applying for a NPDES permit or a Section 404 permit must obtain a water quality certificate (WQC) to comply with Section 401 of the Clean Water Act. Section 401 requires issuance of a WQC as part of the permit issuance process.

(2) A National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act is required for point-source discharges into navigable waters. A Section 404 permit is required to place dredged or fill material in navigable waters including jurisdictional wetlands. A Section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters.

(3) Other State and local permits pertaining to water quality also may be required.

b. FAA Responsibilities. The EA includes sufficient description of a proposed action's design, mitigation measures, and construction controls to demonstrate that State water quality standards and any Federal, State, and local permit requirements will be met. Consultation with the Federal, State, or local officials will be undertaken if there is the potential for contamination of an aquifer designated by the EPA as a sole or principal drinking water resource for the area pursuant to Section 1424(e) of the Safe Drinking Water Act, as amended. Consultation with appropriate officials is necessary to determine which permits apply. The EA reflects the results of consultation with regulating and permitting agencies and with agencies that must review permit applications, such as the FWS, the Army Corps of Engineers, and State and local officials which may have specific concerns. Such consultation should be started at an early stage of the EA. The FAA Official must ensure that the applicable water quality certificate is issued before FAA approves the proposed action.

c. Significant Impact Threshold. Water quality regulations and issuance of permits will normally identify any deficiencies in the proposal with regard to water quality or any additional information necessary to make judgments on the significance of impacts. If the EA and early consultation show that there is a potential for exceeding water quality standards, identify water quality problems that cannot be avoided or satisfactorily mitigated, or indicate difficulties in obtaining required permits, an EIS may be required.

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d. Analysis of Significant Impacts. When the thresholds indicate the potential exists for significant water quality impacts, additional analysis in consultation with State or Federal agencies responsible for protecting water quality will be necessary. These agencies may require specific information or studies.

In the MOA between the DOT and the Department of the Army on Section 404 Permit Processing, there is a provision for elevating permit applications with the Department of the Army. When an Army District Engineer proposes to deny permit or condition one that would cause substantial, unacceptable conditions to the DOT agency, the FAA Official shall advise the appropriate FAA program office in Washington. That office will provide whatever follow-up action may be necessary at the Washington level to resolve the differences.

17. WETLANDS

Statute	Regulation	Oversight Agency
Clean Water Act, Section 404 Rivers and Harbors Act of 1899, Section 10 Executive Order 11990, Protection of Wetlands	33 CFR Parts 320 - 330 DOT Order 5660.1A, Preservation of the Nation's Wetlands	Army Corps of Engineers

a. Requirements. Executive Order (E.O.) 11990, DOT Order 5660.1A, the Rivers and Harbors Act of 1899, and the Clean Water Act address activities in wetlands. E.O. 11990 requires Federal agencies to ensure their actions minimize the destruction, loss, or degradation of wetlands. It also assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, funding, and operation of transportation facilities and projects (7 CFR Part 650.26, August 6, 1982). DOT Order 5660.1A sets forth DOT policy that transportation facilities should be planned, constructed, and operated to assure protection and enhancement of wetlands.

Typically, the FAA or an airport sponsor applies for a Section 404 permit for projects requiring dredge or fill activities in jurisdictional waters after the NEPA document has been approved. There are benefits, however, to developing the permit application earlier in the process. Time savings and reduced controversy may outweigh the extra effort required to address Section 404 considerations as an integral part of the NEPA process. When the two processes are integrated effectively, the Corps' approval of the permit could be concurrent or closely follow with FAA's approval. The Army Corps of Engineers could adopt the FAA's final NEPA document when making a 404 permit decision, thereby avoiding the need to prepare additional NEPA documents. For further information see 33 CFR Part 320, *General*

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Regulatory Policies (COE), 33 CFR Part 325, Appendix B, *NEPA Implementation Procedures for the Regulatory Program*, Chapter 11 of the Federal Highway Administration guidance cites 40 CFR Sections 230, 80, *Regulatory Program: Applicant Information*, pamphlet EP 1145-2-1, May 1985, US Army Corps of Engineers; 40 CFR Section 1500.2, and E.O. 12291.

On December 13, 1996, the Army Corps of Engineers published a final rule reissuing and substantially revising, the nationwide permit program (NWP) under the Clean Water Act.

The FAA promotes wetland banking as a mitigation tool for aviation-related projects that must occur in wetlands due to aeronautical requirements (e.g., unavoidable construction of a runway in a wetland due to prevailing wind). The FAA has developed a policy supporting the use of a wetland banking mitigation strategy (internal Letter of Agreement, dated July 1996). Wetland mitigation banking provides a way to mitigate wetland impacts before those impacts occur. Purchasing credits from a bank does not give the purchaser title to wetlands tracts that comprise a bank, however, it does fulfill the requirements of law and is cost effective. Rather, the purchase is simply a payment to the wetland banker for wetland mitigation services that the bank provides. The purchase of credits from an approved bank signifies that the Section 404 permittee has satisfied its permit-required mitigation obligations. Copies of this policy are available from FAA's Office of Airport Planning and Programming, Community and Environmental Needs Division, APP-600, 800 Independence Ave., S.W., Washington, D.C. 20591.

Permits/Certificates:

(1) A Section 404 permit is required to place dredged or fill material in navigable waters, including wetlands, and a Section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters.

(2) Other State and local permits pertaining to wetlands may also be required.

b. FAA Responsibilities. Early review of proposed actions will be conducted with agencies with special interest in wetlands. Such agencies include State and local natural resource and wildlife agencies, the FWS, the NMFS, the Corps of Engineers, and EPA. This review may be combined as much as possible with the State and local officials. Specific consultation is required under the Fish and Wildlife Coordination Act with the FWS and the State agency having administration over the wildlife resources.

If the action requires an EA, but it would not affect wetlands, the EA should contain a sentence stating that fact. In that case, no wetland impact analysis is needed.

If there is uncertainty about whether an area is a wetland, the local district office of the Army Corps of Engineers or a certified wetland delineation specialist must be contacted for a delineation determination

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(or the Natural Resources Conservation Service (NRCS) formerly SCS to delineate wetlands on agricultural lands). The EA includes information on the location, types, and extent of wetland areas that might be affected by the proposed action. This information can be obtained from the FWS or State or local natural resource agency(ies).

If the action would affect wetlands and there is a practicable alternative that avoids the wetland, this alternative becomes the environmentally preferred alternative. The EA should state that the original project would have affected wetlands, but selection of the practicable alternative enabled the project proponent to avoid the wetlands.

If the action would affect wetlands and there is no practicable alternative, all practical means should be employed to minimize the wetland impacts due to runoff, construction, sedimentation, land use, or other reason. The EA or EIS must contain a description of proposed mitigations, with the understanding that a detailed mitigation plan must be developed to the satisfaction of the 404 permitting agency and those agencies having an interest in the affected wetland.

Impacts of wetlands can be assessed by using the function and values of the wetlands area as a basis to determine significance. If wetlands functions are large in number and the value of these functions is high, it would be appropriate to conduct further study as part of an EIS. For example, the action would substantially alter the hydrology, vegetation, or soils needed to sustain the functions and values of the affected wetlands or the wetlands it supports. Conversely, if wetlands functions are few in number and the value of these functions is low, an EA concluding in a FONSI would be appropriate. For example, the action would not cause substantial increases in sedimentation or siltation in wetlands or waters connected to the affected wetland.

c. Significant Impact Thresholds. A significant impact would occur when the proposed action causes <u>any</u> of the following:

(1) The action would adversely affect the function of a wetland to protect the quality or quantity of municipal water supplies, including sole source, potable water aquifers.

(2) The action would substantially alter the hydrology needed to sustain the functions and values of the affected wetlands.

(3) The action would substantially reduce the affected wetland's ability to retain flood waters or storm-associated runoff, thereby threatening public health, safety and/or welfare (this includes cultural, recreational, and scientific resources important to the public).

(4) The action would adversely affect the maintenance of natural systems that support wildlife and fish habitat and/or economically-important timber, food, or fiber resources in the affected or surrounding wetlands.

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(5) The action would promote development of secondary activities or services that would affect the resources mentioned in items (1) through (4) in this section.

(6) The action would be inconsistent with applicable State wetland strategies.

d. Analysis of Significant Impacts: An agency having expertise in wetland impacts or resources may indicate that the action has potential significant wetland impacts. The FAA Official shall consult with that agency and, as necessary, the FWS, the Corps of Engineers, EPA, or NRCS (if wetlands are on agricultural lands), and State and local natural resource or wildlife agencies to make a determination on severity of wetland impacts. If the action is on tribal lands, then the FAA official must consult with tribal natural resource and wildlife representatives. Any of these agencies may become a cooperating agency due to their expertise or jurisdiction. Permitting agencies may also become cooperating agencies. To the extent practical, the FAA official will ensure that the environmental document meets the needs of the consulted agencies as well as those of the FAA. Scoping is encouraged to meet the needs of the permitting and cooperating agencies. Detailed analysis should include the following, as applicable:

(1) Considerations specified in E.O. 11990, Protection of Wetlands.

(2) An opinion should be issued, based on the above considerations, on the action's overall effect on the survival and quality of the wetlands.

(3) Aeronautical safety, transportation objectives, economics, and other factors bearing on the problem.

(4) Further consideration of the practicability of any alternatives.

(5) Inclusion of all practicable measures to minimize harm.

(6) Pursuant to the Fish and Wildlife Coordination Act, the FAA applies the instructions contained above.

For any action which entails new construction located in wetlands, a specific finding should be made including: (1) there is no practicable alternative to construction in the wetland, and (2) that all practicable measures to minimize harm have been included. The proposed finding should be included in the final EIS or FONSI.

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18. WILD AND SCENIC RIVERS

Statute	Regulation	Oversight Agency
Wild and Scenic Rivers Act [16 U.S.C. 1271 et seq.] [PL 90-542]	36 CFR Part 297, Subpart A FR (September 7, 1982)	Department of Interior

a. Requirements. The Wild and Scenic Rivers Act, as amended, describes those river areas eligible to be included in a system afforded protection under the Act. DOI and the Department of Agriculture (USDA) maintain a National Inventory of river segments that appear to qualify for inclusion in the National Wild and Scenic River System.

The President's 1979 Environmental Message Directive on Wild and Scenic Rivers (August 2, 1979) directs Federal agencies to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory as having potential for designation under the Wild and Scenic Rivers Act.

Section 12 of the Act requires a Federal agency with jurisdiction over any lands which include, border upon, or are adjacent to any river included, or under consideration for inclusion in the System to take action necessary to protect such river in accordance with the purposes of the Act. In addition, Federal agencies are required to cooperate with the Secretary of the Interior and appropriate State agencies for the purpose of eliminating or minimizing pollution in protected Inventory rivers. All agencies shall, as part of their normal environmental review processes, consult with the DOI (National Park Service (NPS)) prior to taking any actions which could effectively foreclose or downgrade wild, scenic, or recreational river status of rivers in the Inventory.

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. As soon as it appears that the proposed action could affect a National Inventory river, the responsible Federal official should contact DOI for verification. If DOI indicates that an Inventory river could be affected, consult with them for guidance as to avoiding or minimizing impacts.

If no Inventory river is adversely affected or the impact is not considered severe enough to preclude inclusion of the affected river segment in the Wild and Scenic River System or downgrade its classification (e.g., from wild to recreational), no further analysis is necessary. Consultation with DOI will determine whether or not the impact on any National Inventory river is significant.

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c. Analysis of Significant Impacts. When consultation with DOI leads to a determination that the effects on the National Inventory river are significant, or would preclude inclusion in the Wild and Scenic River System or downgrade its classification, the FAA invites the NPS and any affected land management agencies to be cooperating agencies. If NPS does not respond to such request for assistance within 30 days, then the FAA proceeds as otherwise planned, taking care as best it can to minimize adverse effects on the National Inventory river.

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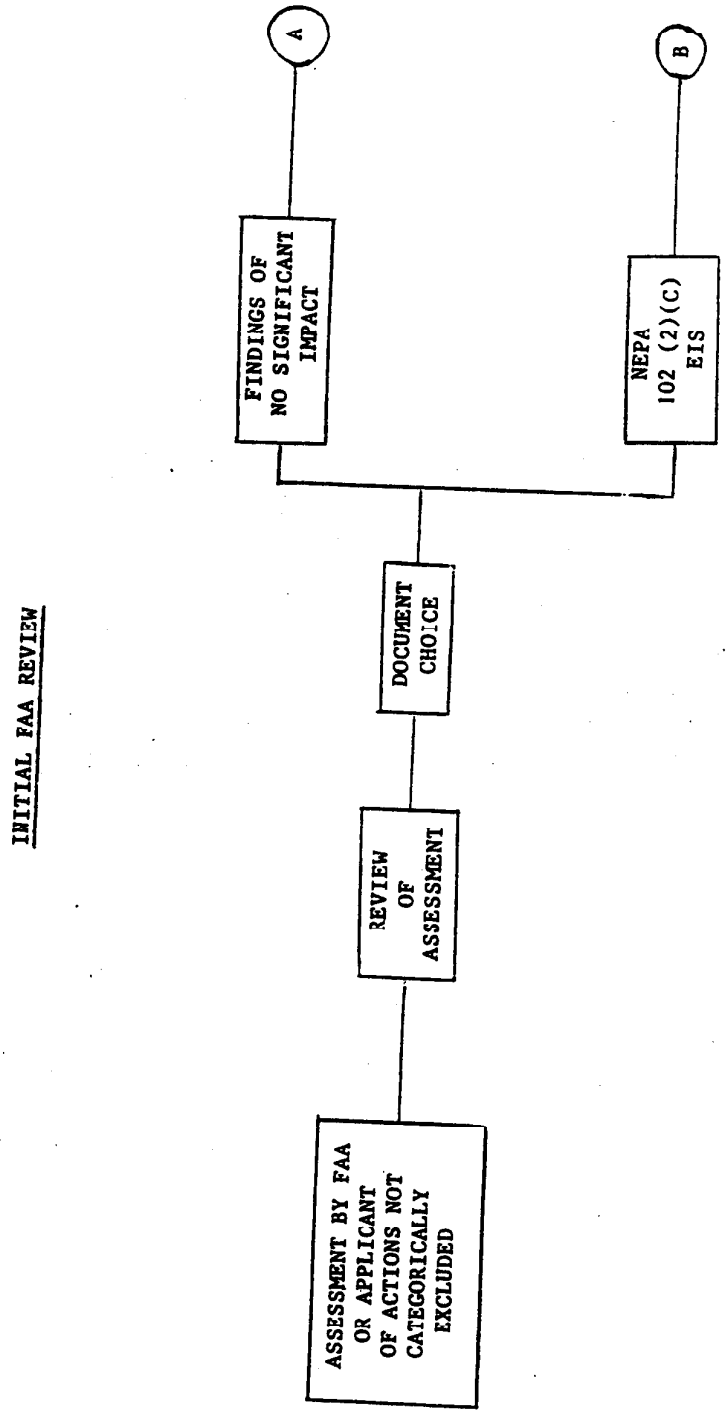
Attachment 1. Flow Charts of Environmental Actions

12/21/83

Chart 1 of 4



FAA PROCESSING AND APPROVAL
OF FINDINGS OF NO SIGNIFICANT IMPACT

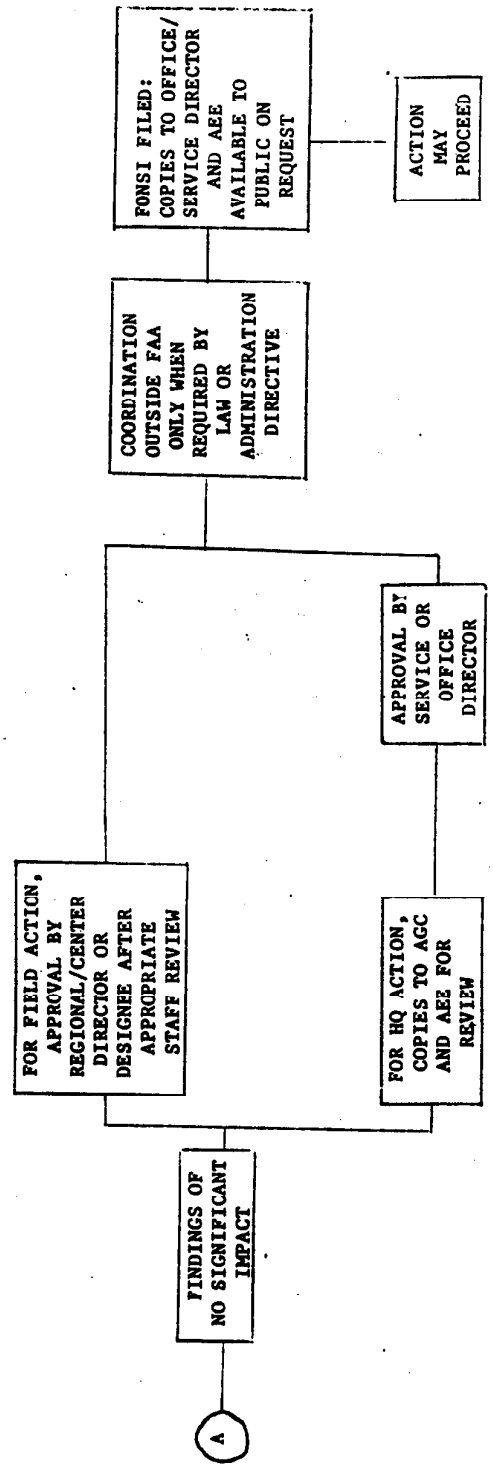


Chart 2 of 4

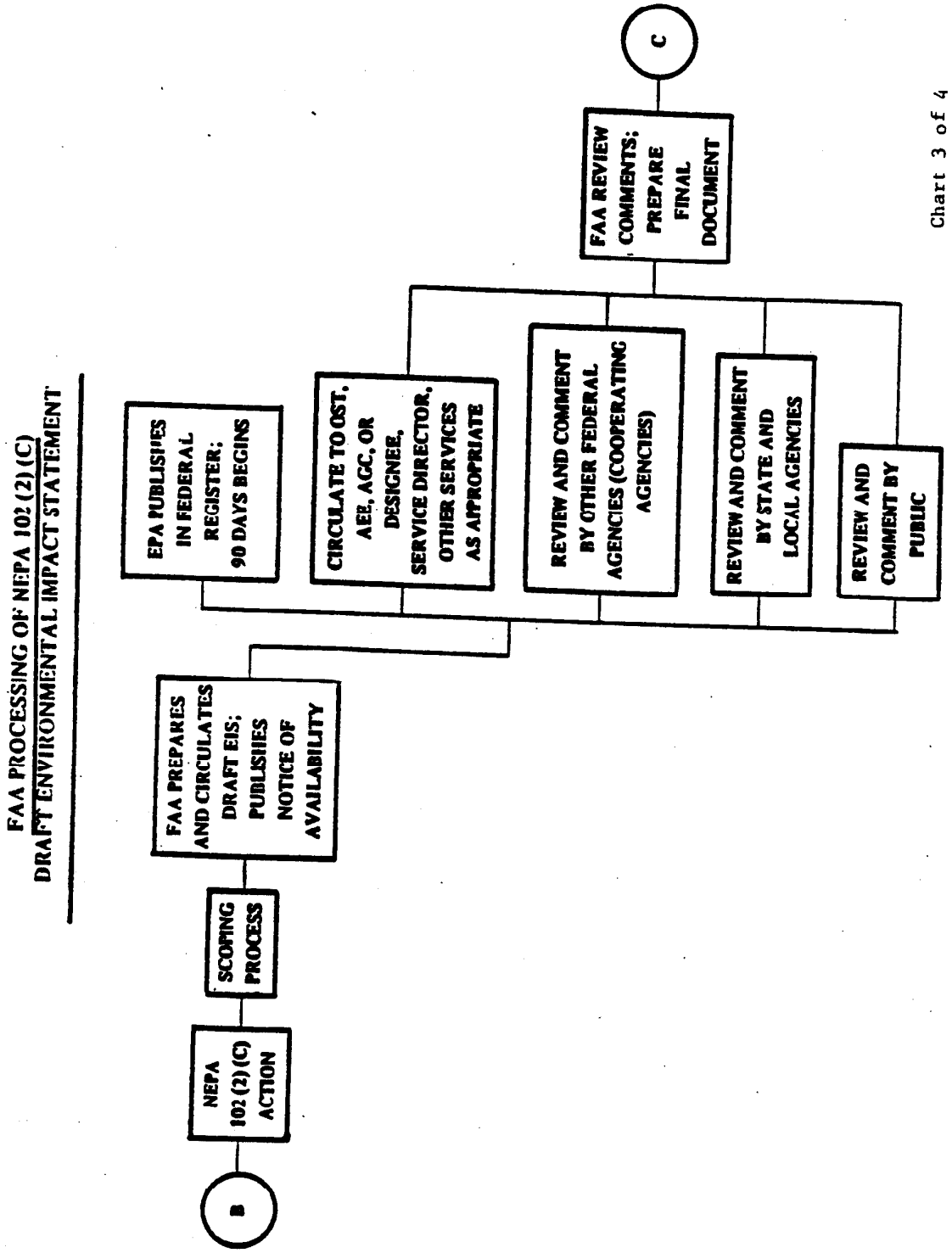

FAA PROCESSING OF NEPA 102 (2) (C)
DRAFT ENVIRONMENTAL IMPACT STATEMENT
B
NEPA 102 (2) (C) ACTION
SCOPING PROCESS
FAA PREPARES AND CIRCULATES DRAFT EIS; PUBLISHES NOTICE OF AVAILABILITY
EPA PUBLISHES IN FEDERAL REGISTER; 90 DAYS BEGINS
CIRCULATE TO OST, AEE, AGC, OR DESIGNEE, SERVICE DIRECTOR, OTHER SERVICES AS APPROPRIATE
REVIEW AND COMMENT BY OTHER FEDERAL AGENCIES (COOPERATING AGENCIES)
REVIEW AND COMMENT BY STATE AND LOCAL AGENCIES
REVIEW AND COMMENT BY PUBLIC
FAA REVIEW COMMENTS; PREPARE FINAL DOCUMENT
C

Chart 3 of 4

FAA FINAL NEPA 102 (2)(C) APPROVAL ACTIONS

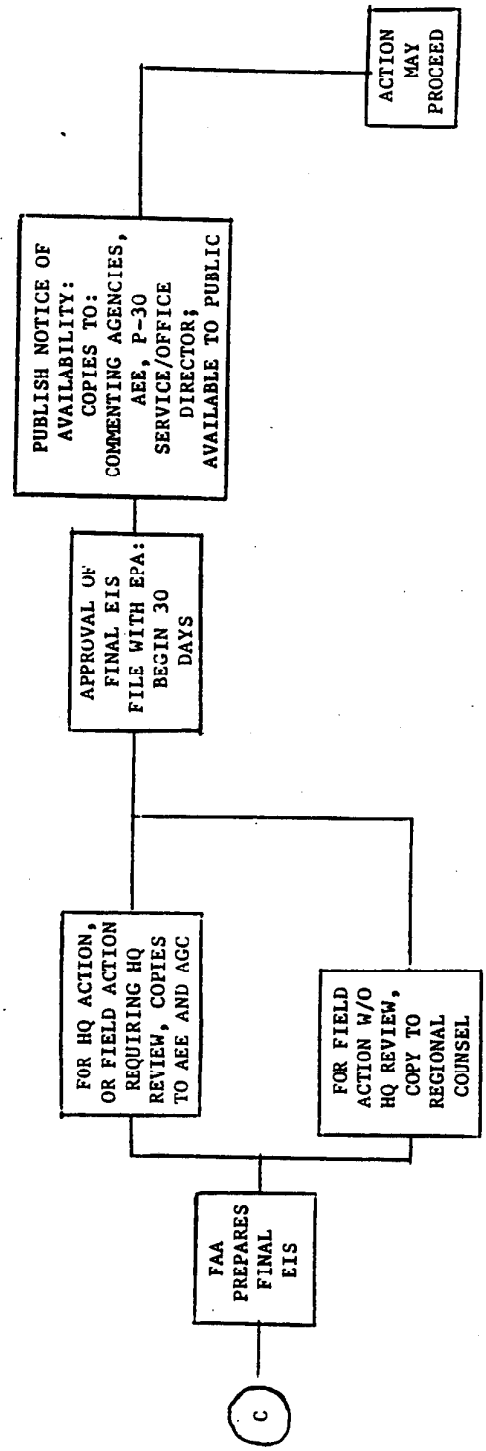


Chart 4 of 4

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ATTACHMENT 2. ANALYSIS OF ENVIRONMENTAL IMPACT CATEGORIES

This attachment provides specific environmental analysis procedures to be used in preparing environmental assessments (EA's) and environmental impact statements (EIS's).

The table of contents lists the potential impact category within this attachment.

1. Air Quality....3
2. Coastal Resources....9
3. Compatible Land Use....11
4. Construction Impacts....15
5. Department of Transportation Act Sec. 4(f)....16
6. Farmlands....19
7. Fish, Wildlife, and Plants....21
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11. Light Emissions and Visual Impacts....42
12. Natural Resources and Energy Supply....43
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14. Secondary (Induced) Impact....47
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17. Wetlands....52
18. Wild and Scenic Rivers....56

This paragraph contains a summary of the requirements and procedures to be used in evaluating these categories of environmental impacts in the Environmental Consequences section of environmental documents.

To effectively use this attachment, first become familiar with the material contained in each section. The overview box highlights major applicable Federal statute(s), regulations, executive orders, and guidance and the oversight agency(ies). Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, is addressed in this attachment in paragraph 15, Socioeconomic Impacts. Since environmental justice is defined as any adverse and disproportionately high impact on minority and low-income groups, this E.O. applies to other impact categories where appropriate. The other related Federal requirements that may apply were too numerous to list.

The information, however, should guide the responsible Federal Aviation Administration (FAA) official to appropriate resources and applicable requirements to be addressed as part of the National Environmental Policy Act (NEPA) process. To assist in this effort, the majority of the impact categories are divided into the following discussion areas: (1) Requirements, (2) FAA Responsibilities, and (3) Analysis of Significant Impacts. A few impact categories will also have a discussion area on Significant Impact Thresholds if thresholds have been

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established by the FAA or appropriate oversight agencies. When there is a discussion area on Significant Impact Thresholds, it will follow the FAA Responsibilities discussion area.

Should a proposed Federal action have a potential air quality impact for example, review the Air Quality section of the attachment to identify the legal references for air quality impacts. These requirements are summarized for ease of use; however, if further information is required, the law, associated implementing regulations, and FAA policy should be reviewed with the Office of the Chief Counsel staff and/or regional counsel support and through coordination with appropriate Federal and State agency personnel.

Once the standards and relationship of the requirements to the project are understood, the significant impact thresholds established by oversight agencies should be reviewed. This section summarizes the impact threshold used to define significance of the effects of the proposed action where such thresholds have been established. For example, the FAA has issued guidance in determining the scope and context of potential noise impacts, and thus, whether an EIS is required.

The final section, the analysis of impacts, provides guidance on the types and levels of evaluation when the impact is determined to be significant. It includes further information on consultations, studies, and identification of mitigation alternatives and monitoring actions.

Each potential impact category relevant to a FAA proposed action and alternative(s) identifies alternative mitigation measures that should be followed except as otherwise provided under the procedures of Section 176(c) of the Clean Air Act, Section 106 of the National Historic Preservation Act, or other special purpose environmental laws.

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1. AIR QUALITY

Statute	Regulation	Oversight Agency
Clean Air Act (CAA), as amended [42 United States Code (U.S.C.) section 7401 et seq.] [Public Law (PL) 91-604, PL 101-549]	Title 40 Code of Federal Regulations (CFR) Parts 9, 50-53, 60, 61, 66, 67, 81, 82, and 93 (which includes General Conformity)	Environmental Protection Agency
49 U.S.C. 47106(c)(1)(B), as amended (formerly sections 509(B)(5) and (B)(7) of the Airport and Airway Improvement Act of 1982, as amended; PL 97-248) [PL 103-272, as amended]		Federal Aviation Administration

a. Requirements. Three primary laws apply to air quality: NEPA, the Clean Air Act (CAA), and 49 U.S.C. 47106(c)(1)(B). As a Federal agency, the FAA is required under NEPA to prepare an environmental document (e.g., environmental impact statement (EIS) or environmental assessment (EA)) for major Federal actions that have the potential to affect the quality including air quality of the human environment. An air quality assessment prepared for inclusion in a NEPA environmental document should include an analysis and conclusions of a proposed action's impacts on air quality.

The CAA established National Ambient Air Quality Standards (NAAQS) for six pollutants, termed *criteria pollutants*. The six pollutants are: carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particulates (PM-10 and PM-2.5), and sulfur dioxide (SO_2). The CAA requires each State to adopt a plan to achieve the NAAQS for each pollutant within timeframes established under the CAA. These air quality plans, known as State implementation plans (SIP), are subject to Environmental Protection Agency (EPA) approval. In default of an approved SIP, the EPA is required to promulgate a Federal implementation plan (FIP).

Title 49 U.S.C. 47106(c)(1)(B) provides that the DOT/FAA may not approve a grant application for an airport development project involving the location of the airport, runway, or major runway extension, unless the Governor of the State in which the project will be located certifies that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air quality standards. Certification must be obtained from the Governor of the State prior to FAA approval of the project. Alternatively, unless delegation is prohibited under applicable State law, certification may be obtained from a State official to whom the Governor has expressly delegated, in writing, his or her authority in this area.

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When a NEPA analysis is needed, the proposed action's impact on air quality is assessed by evaluating the impact of the proposed action on the NAAQS. The proposed action's *build* and *no-build* emissions are inventoried for each reasonable alternative. The inventory should include both direct and indirect emissions that are reasonably foreseeable. Normally, further analysis would not be required for pollutants where emissions do not exceed general conformity thresholds. However, based on the nature of the project and consultation with State and local air quality agencies additional analysis may be deemed appropriate. If there are any questions about whether additional analysis is reasonable, contact the appropriate headquarters office and the Office of Environment and Energy. If required, the emissions for the proposed build case then are translated into pollutant concentrations using a dispersion model. Depending on the project, this step can be data and computation intensive. Once dispersion modeling has been performed, pollutant concentrations are combined with background pollutant concentrations and compared to the NAAQS. If concentrations do not exceed the NAAQS, then the analysis is complete. If concentrations exceed the NAAQS, emissions must be mitigated or offset, or the action redesigned to reduce emissions.

In addition to NEPA, General Conformity, and grant funding requirements, there may be State and local air quality requirements to consider. These requirements can include, but are not limited to, provisions such as State indirect source regulations and State air quality standards.

Section 176(c) of the CAA, as amended in 1990, requires that Federal actions conform to the appropriate Federal or State air quality plans (FIPs or SIPs) in order to attain the CAA's air quality goals. Section 176(c) states:

> "No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation plan."

Conformity is defined as conformity to the implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such Federal activities will not:

(1) Cause or contribute to any new violation of any standard in any area.

(2) Increase the frequency or severity of any existing violation of any standard in any area.

(3) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The CAA 1990 Amendments required the EPA to issue rules that would ensure Federal actions conform to appropriate FIP or SIP. A final rule

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for determining conformity of general Federal actions (40 CFR Part 93, Subpart B) was published in the Federal Register (FR) on November 30, 1993, and became effective January 31, 1994. In addition, 40 CFR Part, 51 Subpart W specify requirements for conformity which States must include in their respective SIP's. Once a SIP conformity provision has been approved by EPA, the State conformity requirements included in the SIP apply. EPA issued separate rules addressing conformity of highway, roadway, and transit plans and projects (40 CFR Part 93, Subpart A, and 40 CFR Part 51, Subpart T) on November 15, 1993. The remaining conformity discussion addresses only General Conformity since FAA actions are subject to this rule, although projects involving airport access may also be subject to some provisions of Transportation Conformity.

The General Conformity Rule establishes the procedures and criteria for determining whether certain Federal actions conform to State or EPA (Federal) air quality implementation plans. To determine whether conformity requirements apply to a proposed Federal action, the following must be considered: the non-attainment or maintenance status of the area; type of pollutant/emissions; exemptions from conformity and presumptions to conform; the project's emission levels; and the regional significance of the project's emissions. FAA actions are subject to the General Conformity Rule. Projects involving airport access may also be subject to some provisions of Transportation Conformity.

General conformity requirements are distinct from NEPA requirements. For example, NEPA may require FAA to analyze several alternatives in detail. If a general conformity determination is required, only the proposed action must be addressed. General conformity, like other environmental requirements, should be integrated into the NEPA process as much as possible. For example, the draft conformity determination should be issued along with any required draft EIS for public comment. However, there may be valid reasons to address general conformity separately rather than concurrently.

The General Conformity Rule only applies in areas that EPA has designated non-attainment or maintenance. A non-attainment area is any geographic area of the U.S. that experiences a violation of one or more NAAQS. A maintenance area is any geographic area of the U.S. previously designated non-attainment for a criteria pollutant pursuant to the CAA Amendments of 1990 and subsequently re-designated to attainment.

The rule covers direct and indirect emissions of criteria pollutants or their precursors from Federal actions that meet the following criteria:

(1) Reasonably foreseeable, and
(2) Can practicably be controlled and maintained by the Federal agency through continuing program responsibility.

A conformity determination is not required if the emissions caused by the proposed Federal action are not reasonably foreseeable; if the emissions caused by the proposed Federal action cannot practicably be controlled and maintained by the Federal agency through its continuing program responsibility; if the action is listed as exempt or presumed to

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conform; or if the action is below the emission threshold (*de minimis*) levels. The emission threshold levels are defined in the General Conformity Rule.

Certain Federal actions are exempt from the requirement of the General Conformity Rule because they result in no emissions or emissions are clearly below the rule's applicability emission threshold levels. These include, but are not limited to:

(1) Continuing and recurring activities such as permit renewals.

(2) Routine maintenance and repair activities.

(3) Routine installation and operation of aviation and maritime navigation aids.

(4) Administrative actions.

(5) Planning studies and provision of technical assistance.

(6) The routine, recurring transportation of materiel and personnel.

(7) Transfers of land, facilities, and real properties.

(8) Actions affecting an existing structure where future activities will be similar in scope to activities currently being conducted.

(9) Enforcement and inspection activities.

(10) Air traffic control activities and adopting approach departure and en route procedures for air operations.

The General Conformity Rule (58 FR 63250, November 30, 1993) provides a provision that permits agencies to develop a list of actions presumed to conform which would be exempt from the requirements of the rule unless regionally significant (discussed below). To date, FAA does not have a list of actions that are presumed to conform. Notification of such a list and the basis for the presumption of conformity will be published in the Federal Register.

If a Federal action is not exempt or presumed to conform, the project's emissions must be analyzed with regard to conformity applicability emission levels. The rule established the threshold emission levels (annual threshold levels) to identify those actions with the potential to have significant air quality impacts. If the project's emissions are below annual threshold levels (*de minimis* levels) and are not regionally significant, then the requirements of the general conformity regulation do not apply to the Federal action or project (and therefore, a conformity determination is not required).

In determining whether emission threshold levels are exceeded (and a conformity determination required), agencies must consider direct and

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indirect emissions. Direct emissions are those that are caused by or initiated by the Federal action and occur at the same time and place as the action. Indirect emissions are those caused by the Federal action, but that occur later in time and/or may be removed in distance from the action. Temporary construction emissions must be considered in determining whether emission threshold levels are exceeded. (See EPA General Conformity Questions and Answers, dated November 1994.)

In addition, the General Conformity Rule adopted the exclusive definition of indirect emissions, which excludes emissions that may be attributable to the Federal action, but that the FAA has no authority to control. The FAA is responsible for assessing only direct and indirect emissions of criteria pollutants and precursors that are caused by a Federal action, are reasonably foreseeable, and can practicably be controlled by the FAA through its continuing program responsibility. The FAA may compare emissions with and without the proposed Federal action during the year in which emissions are projected to be greatest in determining whether emission threshold levels are exceeded.

If a Federal action does not exceed the threshold levels or is presumed to conform, it may still be subject to a general conformity determination if it has regional significance. If the total of direct and indirect emissions of any pollutant from a Federal action represent 10 percent or more of a maintenance or non-attainment area's total emissions of that pollutant, the action is considered to be a regionally significant activity and conformity rules apply. Parts of the overall Federal action that are exempt from conformity requirements (e.g., emission sources covered by New Source Review) should not be included in the analysis. The purpose of the regionally significant requirement is to capture those Federal actions that fall below threshold levels, but have the potential to impact the air quality of a region.

When it has been determined that a proposed Federal action is not exempt, presumed to conform, exceeds emission threshold levels, or is regionally significant, the agency must prepare a conformity determination based on analysis using criteria stated in EPA's General Conformity Rule (40 CFR Part 93).

A proposed action cannot be approved or initiated unless conformity does not apply or a positive conformity determination is issued (i.e., the action conforms to the SIP). If initial analysis does not indicate a positive conformity determination, alternative actions (including mitigation measures as part of the action) should be considered and further consultation, analysis, and documentation will be necessary.

b. FAA Responsibilities. The FAA has a responsibility under NEPA to include in its EA or EIS sufficient analysis to disclose the potentially significant impact of a proposed action on the attainment and maintenance of air quality standards established by law or administrative determination.

It is also the FAA's affirmative responsibility under Section 176(c) of the CAA to assure that its actions conform to applicable SIPs. Before the FAA can fund or support in any way any activity, it must address the

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conformity of the action with the applicable SIP using the criteria and procedures prescribed in the General Conformity Rule or applicable SIP.

In conducting air quality analysis for purposes of complying with NEPA and/or conformity, the FAA required model for aviation sources (aircraft, auxiliary power units, and ground support equipment) is the Emissions and Dispersion Modeling System (EDMS). The EPA accepted EDMS as a formal EPA preferred guideline model in 1993. An order form for the EDMS software and user's guide can be obtained from the EDMS Internet Site or by writing the EDMS Program, Federal Aviation Administration, Office of Environment and Energy, Rm. 902W, 800 Independence Ave., S.W., Washington, D.C. 20591.

If the proposed action either will not conform with the SIP or there is potential for the proposed action to cause the area to exceed the NAAQS, then further consultation, analysis, and documentation will be required in an EA or EIS and conformity determination document.

c. Analysis of Significant Impacts. When the analysis indicates potentially significant air quality impacts, it may be necessary to consult further with State or regional air quality officials and/or with EPA. It also is advisable to include such officials in the EIS scoping process to represent cooperating agencies with air quality expertise. These officials will help identify specific analyses needed, alternatives to be considered, and/or mitigation measures to be incorporated in the action.

AIR QUALITY ASSESSMENT PROCEDURES. NEPA, the CAA Amendments of 1990, and 49 U.S.C. 47106(c)(1)(B) have separate requirements and processes; however, their steps can be integrated and combined for efficiency. Also, an air quality analysis can require the coordination of many different agencies. Such coordination and subsequent analysis takes time; therefore, air quality impacts should be addressed as **EARLY** as practicable when preparing an EA or EIS. For more detailed guidance on air quality procedures see the FAA's *Air Quality Procedures for Civilian Airports and Air Force Bases*, April 1997.

MODELING REQUIREMENTS. The EDMS is FAA's required methodology for performing air quality analysis modeling for aviation sources. EDMS also offers the capability to model other airport emission sources that are not aviation-specific, such as power plants, fuel storage tanks, and ground access vehicles.

Except for air toxics or where advance written approval has been granted to use an equivalent methodology and computer model by the FAA Office of Environment and Energy, the air quality analyses for aviation emission sources from airport and FAA proposed projects conducted to satisfy NEPA, general conformity, and 49 USC 47106(c) requirements under the Clean Air Act must be prepared using the most recent EDMS model available at the start of the environmental analysis process. In the event that EDMS is updated after the environmental analysis process is underway, the updated version of EDMS may be used to provide additional disclosure concerning air quality but use is not required. A complete

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description of all inputs, particularly the specification of non-default data, should be included in the documentation of the air quality analysis. Users also must provide one copy of EDMS input files used in the analysis and the corresponding output files to the FAA official on magnetic media specified by the FAA official.

As stated above, EDMS currently is not designed to perform air toxic analyses for aviation sources, and may be supplemented with other air toxic methodology and models in consultation with the appropriate FAA regional program office. Use of supplemental methodology and models for more refined analysis of *non-aviation* sources also is permitted in consultation with the appropriate FAA regional program office.

All input data should be collected early in the environmental process and should reflect the latest available data. Assistance from the FAA Office of Environment and Energy is available on a case-by-case basis by request through the respective headquarters operating office.

2. COASTAL RESOURCES

Statute	Regulation	Oversight Agency
Coastal Barrier Resources Act of 1982 as amended by the Coastal Barrier Improvement Act of 1990 [16 U.S.C. 3501 3510] [PL 97-348]	U.S. Department of Interior Coastal Barrier Act Advisory Guidelines	Fish and Wildlife Service
Coastal Zone Management Act as amended [16 U.S.C. 1451 to 1464] [PL 92-583]	15 CFR Part 930, Subparts C and D 15 CFR Part 923	National Oceanic and Atmospheric Administration Office of Coastal Zone Management Appropriate State Agency

a. Requirements. Federal activities involving or affecting coastal resources are governed by the Coastal Barriers Resources Act (CBRA) and the Coastal Zone Management Act (CZMA). The CBRA prohibits, with some exceptions, Federal financial assistance for development within the Coastal Barrier Resources System that contains undeveloped coastal barriers along the Atlantic and Gulf coasts and Great Lakes. The CZMA and the National Oceanic and Atmospheric Administration (NOAA) implementing regulations (15 CFR Part 930) provide procedures for ensuring that a proposed action is consistent with approved coastal zone management programs.

Permits/Certificates: Not applicable.

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b. FAA Responsibilities.

CBRA. Maps specifically identifying lands included in the CBRA system are available from the Fish and Wildlife Service (FWS) office administering the CBRA program. If additional guidance on CBRA is needed, refer to the Department of Interior's (DOI) CBRA Advisory Guidelines (43 CFR Subtitle A, reference 48 FR 45664). If the proposed action would occur on land within the CBRA system and involve funding for development, the action must receive an FWS exemption from the provisions of the CBRA. Results of consultation with FWS must be incorporated in the environmental document. Project-related impacts on coastal resource biotic resources and water quality may be described in the document's CBRA section, or in the sections of the document addressing these biotic and water quality issues.

CZMA. When a proposed action affects (changes the manner of use or quality of land, water, or other coastal resources, or limits the range of their uses) the coastal zone in a State with an approved coastal zone management (CZM) program, the EA or EIS shall include the following:

(1) For Federally assisted activities or for other FAA activities, the views of the appropriate State or local agency as to the relationship of such activities with the approved State coastal zone management program, and the determination of the State as to whether the proposal is consistent with the approved State coastal zone management program.

(2) For issuance of a Federal license or permit, the applicant's certification that the proposed action complies with the State's approved program and that such activity will be conducted in a manner consistent with the program, and the State's concurrence with the applicant's certification. (Approval of an airport layout plan approval could by definition be a Federal license or permitting action). The State's concurrence may be presumed if the State does not act within six months after receipt of the applicant's certification, provided the State did not require additional information regarding that certification.

c. Analysis of Significant Impacts. When a State having an approved CZM program raises an objection to the proposed action because the action would not be consistent with the applicable CZM plan, the FAA can not approve the action, unless the objection is satisfied, or it is successfully appealed to the Secretary of Commerce. The process will be normally completed prior to a determination by the FAA of whether or not an EIS is needed for the action. If any issues remain that have not been resolved regarding the relationship of the action to an approved CZM program, such issues are identified in the scoping process and resolved in the EIS. In this situation, the State coastal zone management agency is invited to participate in the scoping process.

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For proposed actions determined to be inconsistent with the State's approved program and if the project cannot be modified so that it is consistent with the plan, the final EIS shall include a finding by the Secretary of Commerce that the proposed action is consistent with the purposes or objectives of the Coastal Zone Management Act or is necessary in the interest of national security. If a finding is not obtained from the Secretary of Commerce, the FAA can not approve the proposed action.

CBRA. Information regarding CBRA application and funding exceptions, including consultation with FWS, is sufficient for EIS purposes. Any significant impacts are reported under other appropriate impact categories.

CZMA. CZM consistency applies only to States having an approved CZM plan. If an action would occur in a State not having an approved CZM plan, the FAA should consult (as necessary) with State and Federal agencies having jurisdiction over or expertise on the affected resources to determine if additional information is needed. Discuss impacts on these resources in sections of the environmental document prepared for those resources.

3. **Compatible Land Use.**

Statute	Regulation	Oversight Agency
Aviation Safety and Noise Abatement Act of 1979, as amended (49 U.S.C. 47501-47507)	Title 14 Code of Federal Regulations (CFR) Part 150	Federal Aviation Administration

a. Requirements. The compatibility of existing and planned land uses in the vicinity of an airport is usually associated with the extent of the airport's noise impacts. Airport development actions to accommodate fleet mix changes or the number of aircraft operations, air traffic changes, or new approaches made possible by new navigational aids are examples of activities that can alter aviation-related noise impacts and land uses subjected to those impacts. In this context, if the noise analysis described in the noise analysis section, paragraph 13, concludes that there is no significant impact, a similar conclusion usually may be drawn with respect to compatible land use. However, if the proposal would result in other impacts exceeding example, disruption of communities, relocation, and induced socioeconomic impacts, the effects on land use shall be analyzed in this context and described accordingly under the appropriate impact category with any necessary cross-refereces to the Compatible Land Use section to avoid duplication.

The Compatible Land Use section of the environmental document shall include documentation to support the required sponsor's assurance under 49 USC 47107(a)(10), formerly Section 511(a)(5) of the 1982 Airport Act, that appropriate action, including the adoption of zoning laws, has been or will be taken, to the extent reasonable, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities

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and purposes compatible with normal airport operations, including landing and takeoff of aircraft. The assurance must be related to existing and planned land uses.

The Airport Development Grant Program (49 USC 47101 *et seq.*) requires that a project may not be approved unless the Secretary of Transportation is satisfied that the project is consistent with plans (existing at the time the project is approved) of public agencies for development of the area in which the airport is located (49 USC 47106(a)(1)).

Permits/Certificates: Not applicable.

b. FAA Responsibilities. FAA officials will contact the sponsor and representatives of affected communities to encourage the development of appropriate compatible land use measures early in the project planning stage. The environmental document shall address what is being done by the jurisdiction(s) with land use control authority, including an update on any prior assurance.

Table 1 describes compatible land use information for several land uses as a function of DNL values. The ranges of DNL values in Table 1 reflect the statistical variability for the responses of large groups of people to noise. Any particular DNL level might not, therefore, accurately assess an individual's perception of an actual noise environment. Compatible or noncompatible land use is determined by comparing the predicted or measured DNL values at a site to the values listed in Table 1.

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TABLE 1— LAND USE COMPATIBILITY WITH YEARLY DAY-NIGHT AVERAGE SOUND LEVELS

Land Use	Yearly day-night average sound level (L_{dn}) in decibels					
	Below 65	65-70	70-75	75-80	80-85	Over 85
RESIDENTIAL						
Residential, other than mobile homes and transient lodgings	Y	N(1)	N(1)	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N(1)	N(1)	N(1)	N	N
PUBLIC USE						
Schools	Y	N(1)	N(1)	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Government services	Y	Y	25	30	N	N
Transportation	Y	Y	Y(2)	Y(3)	Y(4)	Y(4)
Parking	Y	Y	Y(2)	Y(3)	Y(4)	N
COMMERCIAL USE						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail— building materials, hardware and farm equipment	Y	Y	Y(2)	Y(3)	Y(4)	N
Retail trade— general	Y	Y	25	30	N	N
Utilities	Y	Y	Y(2)	Y(3)	Y(4)	N
Communication	Y	Y	25	30	N	N
MANUFACTURING AND PRODUCTION						
Manufacturing, general	Y	Y	Y(2)	Y(3)	Y(4)	N
Photographic and optical	Y	Y	25	30	N	N
Agriculture (except livestock) and forestry	Y	Y(6)	Y(7)	Y(8)	Y(8)	Y(8)
Livestock farming and breeding	Y	Y(6)	Y(7)	N	N	N
Mining and fishing, resource production and extraction	Y	Y	Y	Y	Y	Y
RECREATIONAL						
Outdoor sports arenas and spectator sports	Y	Y(5)	Y(5)	N	N	N
Outdoor music shells, amphitheaters	Y	N	N	N	N	N
Nature exhibits and zoos	Y	Y	N	N	N	N
Amusements, parks, resorts, and camps	Y	Y	Y	N	N	N
Golf courses, riding stables and water recreation	Y	Y	25	30	N	N

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Numbers in parenthesis refer to notes.

*The designations contained in this table do not constitute a Federal determination that any use of land covered by the program is acceptable or unacceptable under Federal, State, or local law. The responsibility for determining the acceptable and permissible land uses and the relationship between specific properties and specific noise contours rests with the local authorities. FAA determinations under Part 150 are not intended to substitute Federally determined land uses for those determined to be appropriate by local authorities in response to locally determined needs and values in achieving noise compatible land uses.

KEY TO TABLE 1

SLUCM = Standard Land Use Coding Manual.

Y (YES) = Land Use and related structures compatible without restrictions.

N (No) = Land Use and related structures are not compatible and should be prohibited.

NLR = Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure.

25, 30, or 35 = Land use and related structures generally compatible; measures to achieve NLR of 25, 30 or 35 dB must be incorporated into design and construction of structure.

NOTES FOR TABLE 1

(1) Where the community determines that residential or school uses must be allowed, measures to achieve outdoor to indoor Noise Level Reduction (NLR) of at least 25 dB and 30 dB should be incorporated into building codes and be considered in individual approvals. Normal residential construction can be expected to provide a NLR of 20 dB, thus, the reduction requirements are often stated as 5, 10 or 15 dB over standard construction and normally assume mechanical ventilation and closed windows year round. However, the use of NLR criteria will not eliminate outdoor noise problems.

(2) Measures to achieve NLR of 25 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(3) Measures to achieve NLR of 30 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(4) Measures to achieve NLR of 35 dB must be incorporated into the design and construction of portions of these buildings where the public is received, office areas, noise sensitive areas or where the normal noise level is low.

(5) Land use compatible provided special sound reinforcement systems are installed.

(6) Residential buildings require an NLR of 25.

(7) Residential buildings require an NLR of 30.

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(8) Residential buildings not permitted.

c. Analysis of Significant Impacts. When the noise analysis (see Noise paragraph) indicates that a significant noise impact will occur over noise sensitive areas within the DNL 65 dB contour, the analysis should include a discussion of the noise impact on those areas. Any mitigation measures to be taken in addition to those associated with other land use controls shall be discussed. FAA Advisory Circular 150/5020-1, *Noise Control and Compatibility Planning for Airports,* presents guidance for airport operators and planners to help achieve compatibility between airports and their environs.

4. CONSTRUCTION IMPACTS

Statute	Regulation	Oversight Agency
See requirements below		

a. Requirements. Local, State, or Federal ordinances and regulations address the impacts of construction activities, including construction noise, dust and noise from heavy equipment traffic, disposal of construction debris, and air and water pollution. Many of the specific types of impacts that could occur are covered in the descriptions of other appropriate impact categories.

Permits/Certificates: National Pollutant Discharge Elimination System (NPDES) permit (when construction disturbs 1 acre or more).

b. FAA Responsibilities. The environmental document must include a general description of the type and nature of the construction and measures to be taken to minimize potential adverse effects. At a minimum, reference is made to the incorporation in project specifications of the provisions of Advisory Circular 150/5370-10A, Standards for Specifying Construction of Airports.

c. Analysis of Significant Impacts. In an unusual circumstance where a construction impact would create significant consequences that cannot be mitigated, a more thorough discussion is needed, including the results of consultations with those agencies that have concerns and the reasons why such impacts cannot be avoided or mitigated to insignificant levels.

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5. DEPARTMENT OF TRANSPORTATON - SECTION 4(f)

Statute	Regulation	Oversight Agency
Department of Transportation Act of 1966, section 4(f) [recodified at 49 U.S.C. 303 (c)]		Department of Transportation

a. Requirements. The Federal statute that governs impacts in this category is the Department of Transportation (DOT) Act, Section 4(f) provisions. Section 4(f) of the DOT Act provides that the Secretary of Transportation will not approve any program or project that requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance or land from an historic site of national, State, or local significance as determined by the officials having jurisdiction thereof, unless there is no feasible and prudent alternative to the use of such land and such program, or the project includes all possible planning to minimize harm resulting from the use.

Procedural requirements are set forth in DOT Order 5610.1C, Attachment 2, paragraph 4. The FAA also uses as guidance to the extent relevant the Federal Highway Administration and Urban Mass Transportation Administration's guidance defining *Constructive Use* under 23 CFR Section 771.135 (56 FR 13269, April 1, 1991).

Designation of airspace for military flight operations is exempt from Section 4(f). The Department of Defense reauthorization in 1997 provided that " [n]o military flight operations (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of Section 303(c) of title 49, United States Code" (PL 105-85, Nov. 18, 1997).

Permits/Certificates: Not Applicable.

b. FAA Responsibilities.

(1) Any part of a publicly owned park, recreation area, refuge, or historic site is presumed to be significant unless there is a statement of insignificance relative to the whole park by the Federal, State, or local official having jurisdiction thereof. Any such statement of insignificance is subject to review by the FAA.

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(2) Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes. National wilderness areas may serve similar purposes and shall be considered subject to Section 4(f) unless the controlling agency specifically determines that for Section 4(f) purposes the lands are not being used.

(3) Where property is owned by and currently designated for use by a transportation agency and a park or recreation use of the land is being made only on an interim basis, a Section 4(f) determination would not ordinarly be required. The FAA official or sponsor should indicate in any lease or agreement involving such use that this use is temporary.

(4) Where the use of a property is changed by a State or local agency from a Section 4(f) type use to a transportation use in anticipation of a request for FAA approval, Section 4(f) shall be considered to apply, even though the change in use may have taken place prior to the request for approval or prior to any FAA action on the matter. This is especially true where the change in use appears to have been undertaken in an effort to avoid the application of Section 4(f).

For Section 4(f) properties, the initial assessment will determine whether the requirements of Section 4(f) are applicable. When there is an actual physical taking of lands being used for park purposes in conjunction with a project, there is generally no latitude for judgement regarding 4(f) applicability. Use within the meaning of Section 4(f) includes not only actual, physical takings of such lands but also adverse indirect impacts (constructive use) as well. When there is no physical taking, but there is the possibility of adverse impacts, the FAA must determine if the activity associated with the proposal is compatible or conflicts with the normal activity associated with the land. The proposed action is compatible if it would not affect the normal activity or aesthetic value of a 4(f) resource. When this is the case, the action would not constitute a use and would not therefore invoke Section 4(f) of the DOT Act.

In determining whether there is constructive use, the FAA determines whether increases in noise or other impacts due to proximity of the project are so severe that the activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the activities, features, or attributes of the resource that contribute to its significance or enjoyment are substantially diminished. A project which respects a park's territorial integrity may still, by means of noise, air pollution, or otherwise, dissipate its aesthetic value, harm its wildlife, defoliate its vegetation, and take it in every practical sense.

The land use compatibility guidelines in 14 CFR Part 150 (Part 150) may be relied upon to determine whether there is a constructive use under Section 4(f) (and a potentially significant impact under the NEPA) where the land uses specified in the regulation bear some relevance to the

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value, significance, and enjoyment of the 4(f) lands in question. For example, Part 150 criteria may be relied upon in evaluating constructive use of lands devoted to traditional recreational activities. FAA may primarily rely upon the average day night sound levels (DNL) in Part 150 rather than single event noise analysis because DNL is the best measure of significant impact on the quality of the human environment and is the only noise metric with a substantial body of scientific data on the reaction of people to noise.

Turning to historic sites, FAA may also rely upon Part 150 criteria to evaluate impacts on historic properties that are in use as residences. If architecture and place in history are the relevant characteristics of an historic neighborhood, then project-related noise does not degrade the values that led to eligibility for or listing on the National Register of Historic Places. As a result the noise does not constitute an adverse effect and Section 4(f) would not be triggered. A historic property would not be " used" for Section 4(f) purposes when FAA issues a finding of " No Effect" or " No Adverse Effect" under Section 106 of the National Historic Preservation Act. Although there may be some physical taking of land, Section 4(f) does not apply to archeological resources that have value chiefly for data recovery and which are not important for preservation in place.

Carefully evaluate whether to rely solely upon Part 150 criteria when assessing use of Section 4(f) properties where a quiet setting is a generally recognized feature or attribute of the site's significance or impacts upon enjoyment of an urban park where serenity and quiet are significant attributes. For example, Part 150 guidelines are of little use in addressing the effects of noise on the expectations and purposes of persons who visit wildlife refuges to study and enjoy wildlife. The FAA official must consult all appropriate Federal, State, and local officials having jurisdiction over the affected property's impacts on Section 4(f) resources.

The FAA official should become aware of and make all reasonable attempts to consult with other Federal, State, and local officials who have responsibility over any adjacent, nearby, or potentially affected properties.

If it is determined that Section 4(f) is applicable and there are no feasible or prudent alternatives which would avoid such use, the effect on the Section 4(f) land shall be described in detail. The description of the land shall include size, activities, patronage, access, unique or irreplaceable qualities, relationship to similarly used lands in the vicinity, or other factors necessary to determine the effects of the action and measures needed to minimize harm. Such measures may include replacement of land and facilities and design measures such as planting or screening to mitigate any adverse effects. Replacement satisfactory to the Secretary of the Interior (DOI) is specifically required for recreation lands aided by the DOI's Land and Water Conservation Fund and for certain other lands falling under the jurisdiction of the DOI. The environmental document shall include evidence of concurrence or efforts to obtain concurrence of appropriate officials having jurisdiction over such land regarding actions proposed to minimize harm.

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If Federal grant money was used to acquire the land involved (e.g., open space under the Department of Housing and Urban Development (HUD) and various conservation programs under DOI) the environmental document shall include evidence of or reference to appropriate communication with the grantor agency.

c. Significant Impact Thresholds. A significant impact would occur when a proposed action would eliminate or severely degrade the purpose of use for which the Section 4(f) land was established and mitigation would not reduce the impact to levels that would allow the purpose or use to continue.

d. Analysis of Significant Impacts. The FAA shall consult with the officials having jurisdiction over the Section 4(f) property(ies), and other agencies, as necessary. The EIS thoroughly analyzes and documents alternatives that would avoid the use of Section 4(f) property and provide detailed measures to minimize harm.

6. FARMLANDS

Statute	Regulation	Oversight Agency
Farmland Protection Policy Act [7 U.S.C. 4201 et seq.] [PL 97-98] Food Security Act of 1985 [PL 99-198]	7 CFR Part 658 (57 FR 31110) 7 CFR Part 657 (43 FR 4030)	Natural Resource Conservation Service

a. Requirements. The Farmland Protection Policy Act (FPPA) regulates Federal actions with the potential to convert farmland to non-agricultural uses.

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. Consultation with the Natural Resources Conservation Service (NRCS) should occur to determine if the FPPA applies to the land the proposed action would convert, or if an exemption to the FPPA exists. If it is determined that the farmland is protected by the FPPA, formal coordination as provided by 7 CFR Part 658 is required.

The FAA official should become aware of and make all reasonable attempts to consult with other Federal, State, and local officials who have responsibility over any adjacent, nearby, or potentially affected lands to assure compatibility of the proposed action and affected farmland.

For FPPA-regulated farmland, scoring of the relative value of the site for preservation is performed by the NRCS and the proponent. If the total score on Form AD-1006 is below 160, no further analysis is

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necessary. Scores between 160 and 200 may have potential impacts and require further consideration of alternatives that would avoid this loss. Consider measures that reduce the amount of protected farmland that the project would convert or use farmland having relative lower value. If NRCS fails to respond within 45 days and if further delay would interfere with construction activities, the action may proceed as though the site were not farmland protected by the FPPA. The FAA then documents a *no response* by the NRCS in the environmental document.

If there are unresolved land use issues with State and local officials, then further consultation will be required.

c. **Significant Impact Thresholds.** A significant impact would occur when the total combined score on Form AD 1006 (copies available from NRCS) ranges between 200 and 260 points. Note that impact severity increases as the total combined score approaches 260 points.

d. **Analysis of Significant Impacts.** The analysis evaluates the impacts on agricultural production in the area; compatibility with State, local and private programs and policies to protect farmland; any disruption of the farming community either as a direct result of the construction or by changes in land use associated with the action; and non-viability of farm support services in the area as a result of farmland conversion. Measures to minimize harm will be considered, including adjustments in the action to reduce the amount of farmland taken out of production or retain as much of the land as possible for agricultural use by incorporation into compatible land use plans.

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7. FISH, WILDLIFE, AND PLANTS

Statute	Regulation	Oversight Agency
Endangered Species Act of 1973 [16 U.S.C. 1531 to 1544] [PL 93-205]	50 CFR Parts 17 and 22 50 CFR Part 402 50 CFR Parts 450-453 MOU on Implementation of the Endangered Species Act, 9/28/94 MOU on Using an Ecosystem Approach in Agency Decision-making, 12/5/95 CEQ Guidance on Incorporating Biodiversity Considerations into Environmental Impact Analysis, January 1993	Fish and Wildlife Service National Marine Fisheries Service U.S. Department of the Interior Council on Environmental Quality
Sikes Act Amendments of 1974 [PL 93-452, 88 Stat. 1369]		State Natural Heritage Programs
Executive Order 13112, Invasive Species	DOT Policy on Invasive Species, 4/22/99	
Fish and Wildlife Coordination Act of 1958 [16 U.S.C. 661-666c] [PL 85-624, 72 Stat. 563]		
Fish and Wildlife Conservation Act of 1980 [16 U.S.C. 2901 to 2912] [PL 96-366, 94 Stat. 1322]	50 CFR Part 83	

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a. Requirements.

Section 7 of the Endangered Species Act (ESA), as amended, applies to Federal agency actions and consultations. Section 7(a)(2) requires each agency, generally the lead agency, in consultation with the Services to ensure that any action the agency authorizes, funds, or carries out is not likely to jeopardize the continued existence of any Federally listed endangered or threatened species or result in the destruction or adverse modification of critical habitat. (The effects on fish, wildlife, and plants include the destruction or alteration of habitat and the disturbance or elimination of fish, wildlife, or plant populations.) Section 10 recovery plans should be reviewed for guidance. If a species has been listed as a candidate species, Sec. 7(a)(4) states that each agency shall confer with the Services. Refer to the FWS and NMFS *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*, March 1998.

The Sikes Act and various amendments authorizes States to prepare statewide wildlife conservation plans and the Department of Defense (DOD) to prepare similar plans for resources under its jurisdiction. Actions should be checked for consistency with the State Wildlife Conservation Plans and DOD plans where such plans exist.

The Fish and Wildlife Coordination Act requires that agencies consult with the State wildlife agencies and the Department of the Interior (FWS) concerning the conservation of wildlife resources where the water of any stream or other water body is proposed to be controlled or modified by a Federal agency or any public or private agency operating under a Federal permit.

The Fish and Wildlife Conservation Act provides for financial and technical assistance to States to develop conservation plans, subject to approval by the Department of the Interior, and implement State programs for fish and wildlife resources. The Fish and Wildlife Conservation Act also encourages all Federal departments and agencies to utilize their statutory and administrative authority, to the maximum extent practicable and consistent with each agency's statutory responsibilities, to conserve and to promote conservation of nongame fish and wildlife and their habitats, in furtherance of the provisions of this Act.

EO 13112, Invasive Species, and the DOT Policy on Invasive Species require FAA to identify proposed actions that may involve risks of introducing invasive species on native habitat and populations" Introduction" is the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity. " Invasive species" are alien species whose introduction does or is likely to cause economic or enviornmental har or harm to human health. Section 2 of the Executive Order spells out Federal agency duties. Where such an action has been identified, FAA may not authorize, fund, or carry out actions that the FAA believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined that the benefits of

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such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions. In addition, FAA must to the extent practical and permitted by law, and subject to the availability of approriations, and within Administration budgetary limits, use relevant programs and authorities to prevent introduction; detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; monitor invasive species populations accurately and reliably; provide for restoration of native species and habitat conditions in ecosystems that have been invaded; conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and promote public education on invasive species and the means to address them. Other related requirements, include the Aquatic Nuisance Plant Control Act, which includes provisions relating to the brown tree snake, and those laws governing import or export of plants and animals across state and national borders, such as the Lacey Act Amendments of 1991, which prohibit the transport across state lines of any wildlife or plants taken in violation of any State law, depending on the circumstances. The Presidential Memorandum on Economically and Environmentally Beneficial Landscaping encourages the use of native plants at Federal facilities and in federally funded projects.

a. The CEQ guidance on incorporating biodiversity considerations into environmental impact analyses under the National Environmental Policy Act requires Federal agencies to consider the effects of Federal actions on biodiversity to the extent that is possible to both anticipate and evaluate those effects. The guidance outlines the general principles and discusses the importance of context, that is, examining the indirect, direct, and cumulative impacts of a specific project in the regional or ecosystem context.

b. The MOU on Using an Ecosystem Approach in Agency Decision-making requires FAA to participate, as appropriate to its mandates, in ecosystem management efforts initiated by other Federal agencies, by state, local or tribal governments, or as a result of local grass-roots efforts. The ecosystem approach, consistent with the requirements in NEPA to use ecological information, emphasizes consideration of all relevant and identifiable ecological and economic consequences both long term and short term; coordination among Federal agencies; partnership; communication with the public; efficient and cost-effective implementation; use of best available science; improved data and information management, and responsiveness to changing circumstances.

Permits/Certificates: Various wildlife statutes, such as the Marine Mammal Protection Act, require permits.

b. FAA Responsibilities. Coordination is to be initiated with the Services pursuant to the ESA for Federally listed endangered, threatened, and candidate species or designated critical habitat, and, pursuant to the Fish and Wildlife Coordination Act where there is a potential impact on water resources with the Services as well as other Federal, State, Tribal, and local agencies having administration over

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fish, wildlife, and plant resources. For Federally listed, proposed, and candidate species and listed and proposed critical habitat, this initial step is known as informal consultation and triggers the ESA Section 7(d) prohibition on irreversible or irretrievable commitment of resources.

Letters will be obtained from these officials on the possible effects of the proposal on these resources and possible mitigation measures. The letters from the appropriate officials will provide an indication of the potential for substantial damage to water resources and wildlife attributable to the proposal, if applicable.

Informal consultation under ESA Section 7: Informal consultation with the Services under Section 7 of the ESA will clarify whether and what Federally listed, proposed, or candidate species or Federally designated or proposed critical habitat may be found in the potentially impacted areas, determine what effect the action may have on these species or critical habitats; explore ways to modify the action to reduce or remove adverse effects to the species or critical habitats; determine the need to enter into formal consultation for listed species or designated critical habitat, or conference for proposed species or proposed critical habitat; and explore the design or modification of an action to benefit the species. The Services will prepare or concur with the action agency's species list and identify major gaps in biological information. A biological assessment (BA) is defined as information prepared by, or under the direction of, a Federal agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify proposed critical habitat. Biological assessments are mandatory for " major construction activities." See 50 CFR Section 402.02. BA's are not required to analyze alternatives to proposed actions. The recommended contents of a BA are found in 50 CFR Section 402.12(f). For other types of proposed actions, the Federal agency must provide the Services with the information the Federal agency used in evaluating the likely effects of the action. Informal consultation ends if the proposed action, whether a major construction activity or other action, is not likely to adversely affect species or critical habitat (i.e., effects are expected to be completely beneficial (contemporaneous positive effects without any adverse effects to the species), discountable (extremely unlikely to occur), or insignificant (should never reach the scale where take occurs)), and the Service concurs in writing.

Formal consultation under ESA Section 7(a)(2): For Federally listed threatened and endangered species and Federally designated critical habitat, formal consultation with FWS or NMFS under Section 7(a)(2) of the ESA is triggered when: 1) the FAA determines that the proposed action " may affect" Federally listed species or designated critical habitat, unless the FWS or NMFS concur in writing that the proposed action is not likely to adversely affect any listed species or critical habitat, or 2) the FWS or NMFS does not concur with the agency's determination that the proposed action is not likely to adversely affect Federally listed species or designated critical habitat. Formal

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consultation is concluded with a Biological Opinion (No Jeopardy/Adverse Modification Opinion, including an

incidental take statement, or Jeopardy/Adverse Modificiation Opinion), as discussed below.

Conference under ESA Section 7(a)(4): If the proposed action is likely to adversely affect Federally proposed species or critical habitat, then conference is required for Federally proposed species and Federally proposed critical habitat, unless the Federal agency decides to include the analysis of effects on proposed species and proposed critical habitats in the formal consultation process. Conference can be useful in later expediting the consultation process when a proposed species is listed or proposed critical habitat is designated. For Federally proposed species and critical habitat, at the conclusion of conference, the Services will provide conservation recommendations. Conservation recommendations are discretionary agency activities.

Other statutes: Other statutes, such as the Marine Mammal Protection Act, may also apply depending upon the circumstances.

It may be assumed that there are no significant impacts on fish, wildlife, and plants if:

For Federally listed threatened and endangered species and designated critical habitat under the ESA:

(1) The reply from the FWS or NMFS following informal consultation indicates that the proposed action is not likely to adversely affect any listed species or critical habitat (i.e., the effects are completely beneficial, insignificant, or discountable); or

(2) A Biological Opinion issued by the FWS or NMFS following formal consultation states that the proposed action is not likely to jeopardize the continued existence of Federally listed threatened or endangered species in the affected area or result in the destruction or adverse modification of Federally designated critical habitat in the affected area (No Jeopardy/Adverse Modification Opinion). A No Jeopardy/Adverse Modification Opinion may include one or more reasonable and prudent alternatives to eliminate jeopardy. The incidental take statement, included in the No Jeopardy/Adverse Modification Opinion, provides nondiscretionary reasonable and prudent measures that are necessary and appropriate to minimize the level of incidental take and avoid jeopardy. Different levels of take and different reasonable and prudent measures may be specified for each reasonable and prudent alternative. (Formal consultation may be reinitiated when the amount or extent of incidental take is exceeded; new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; the action is modified in a manner causing effects to listed species or critical habitat not previously considered; or a new species is listed or critical habitat is designated that may be affected by the action.)

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For species not Federally listed as threatened or endangered and habitats not Federally designated as critical under the ESA:

The FWS, NMFS, or other Federal, State or Tribal agency responsible for protecting wildlife where there is an impact on a water resource indicate that the impacted area is human-dominated, or the impact is transient in nature, or the alteration would not result in a long-term or permanent loss of wildlife or water resources.

If, after these efforts, significant impacts are unavoidable, then the FAA official conducts further consultation and analysis with the Services and other Federal, State, Tribal, or local officials in the preparation of the EIS.

c. Analysis of Significant Impacts.

(1) General. The FAA will coordinate with the Services, other Federal, State, Tribal, or local wildlife agencies, and others as necessary to assess the potential impacts. If the proposed action affects water resources and thereby triggers the Fish and Wildlife Coordination Act, then the FAA considers the recommendations of the FWS, NMFS, other Federal agencies, and the State or Tribal wildlife agency and assures that further detailed analysis is performed. This may include:

(a) Use of aerial photographs and field reconnaissance.

(b) Determining the significance of impacted habitats including the importance and range of fauna and flora and the location of nesting and breeding areas.

(c) A more detailed analysis of other impact areas (e.g., noise, air quality, water quality).

(2) Federally listed threatened and endangered species and Federally designated criticat habitat. For Federally listed threatened and endangered species and Federally designated critical habitats, the FAA forwards to the Services the BA as required for major construction activities or supporting information as needed for other types of proposed actions with a request to initiate formal consultation under Section 7(a)(2) of the ESA. The BA may be included in an EA. If the FAA accepts an alternative proposed by the FWS or the NMFS or proposes another acceptable alternative, the FAA also may conclude that impacts are not significant. If neither of the above apply, the potential impact is considered significant. In the preparation of an EIS, the FAA requests the Services to be cooperating agencies on the basis of their jurisdiction. Further detailed analysis may consider:

(a) Further mitigation measures or action modifications.

(b) Further biological assessment.

(c) If the FWS or NMFS issues a Jeopardy/Adverse Modification Opinion, FAA may not proceed with the action unless the project is

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modified sufficiently to enable the Services to issue a No Jeopardy/Adverse Modification Opinion, or the action is exempted under 50 CFR Part 451.

8. FLOODPLAINS AND FLOODWAYS

Statute	Regulation	Oversight Agency
Executive Order 11988, Floodplain Management	DOT Order 5650.2, Floodplain Management and Protection	Federal Aviation Administration
Appropriate State and local construction statutes		Federal Emergency Management Agency
		Appropriate State and local agencies

a. Requirements. Executive Order 11988 directs Federal agencies to take action to reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and restore and preserve the natural and beneficial values served by floodplains. DOT Order 5650.2 contains DOT's policies and procedures for implementing the executive order. Agencies are required to make a finding that there is no practicable alternative before taking action that would encroach on a base floodplain based on a 100-year flood.(7 CFR Section 650.250).

b. FAA Responsibilities. The FAA official will consult with State and local officials to determine the boundaries of floodplains near the site of the action. The Federal Emergency Management Agency (FEMA) maps are the primary reference for determining the extent of the base floodplain. If a floodplain designation is in question, FEMA or the Army Corps of Engineers will be contacted for information.

If the proposed action and reasonable alternatives are not within the limits of, or if applicable, the buffers of a base floodplain, that statement should be made. No further analysis is needed.

If the agency finds that the only practicable alternative requires siting in the base floodplain, a floodplain encroachment would occur and further environmental analysis is needed. The FAA shall, prior to taking the action, design or modify the proposed action to minimize potential harm to or within the base floodplain. The action is to be consistent with regulations issued according to Section 2(d) of E.O. 11988. The FAA shall also provide the public with an opportunitiy to review the encroachment through its public involvement process and any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document must state that an encroachment is anticipated.

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FAA's analysis shall also indicate if the encroachment would be a " significant encroachment," that is, if it would cause one or more of the following impacts:?

(1) The action would have a high probability of loss of human life.

(2) The action would likely have substantial, encroachment-associated costs or damage, including interrupting aircraft service or loss of a vital transportation facility (e.g., flooding of a runway or taxiway; important navigational aid out of service due to flooding, etc.); or

(3) The action would cause adverse impacts on natural and beneficial floodplain values.

If one or more of the alternatives under consideration includes significant floodplain encroachments, then any public notices, notices of opportunity for public hearing, public hearing notices, and notices of environmental document availability, shall note that fact.

When flood storage is displaced, the analysis should consider compensatory floodwater storage impacts on upstream property, or how that storage could affect aquatic or other biotic systems. Development project not causing higher flood elevations or altering flood storage could adversely affect beneficial or natural floodplain values.

Actions outside a base floodplain may adversely affect natural and beneficial floodplain resources. Consider impacts on natural and beneficial floodplain values, water pollution, increased runoff from impermeable surfaces, changes in hydrologic patterns, or induced secondary development. Mitigation to minimize such impacts is needed to comply with the applicable regulations. This mitigation may include: commiting to comply with special flood-related design criteria; elevating facilities above the base flood elevation; or minimizing fill placed in floodplains.

c. Significant Impact Thresholds. If a significant encroachment is involved that would result in notable adverse impacts on natural and beneficial floodplain values, preparation of an EIS is required. Mitigation measures for base floodplain encroachments may include commiting to special flood related design criteria, elevating facilities above base flood level, locating nonconforming structures and facilities out of the floodplain, or minimizing fill placed in floodplains.

d. Analysis of Significant Impacts. When the FAA prepares an EIS addressing significant impacts in this category, Federal, State, or local agencies with floodplain jurisdiction and expertise may become cooperating agencies. Further analysis includes the following as applicable to the action:

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(1) Further consideration of the practicability of any alternatives.

(2) Inclusion of all practicable measures in the design of the proposal to minimize harm and to restore and preserve the natural and beneficial floodplain values affected. Commitments to later compliance with special flood related design criteria or the imposition, in advance, of protective conditions may be warranted in some situations.

(3) Evidence that the action conforms to applicable State and/or local floodplain protection standards.

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9. HAZARDOUS MATERIALS AND SOLID WASTE

Statute	Regulation	Oversight Agency
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Community Environmental Response Facilitation Act of 1992) [42 U.S.C. 9601- 9675]	40 CFR Parts 300, 302, 373, 355, 370, and 372 Executive Order 12856	Environmental Protection Agency
Pollution Prevention Act of 1990 [42 U.S.C. 1310- 13109]	CEQ Memorandum on Pollution Prevention and the National Environmental Policy Act, 1/12/93 (58 FR 6478)	Council on Environmental Quality
Toxic Substances Control Act (TSCA) [15 U.S.C. 2601- 2692] [PL 94-550]	40 CFR Parts 761 and 763	
Resource Conservation and Recovery Act of 1976 (RCRA) [42 U.S.C. 6901-6992(k)] [PL 94-580] (As amended by the Solid Waste Disposal Act of 1980, [PL 96-482] As amended by the Hazardous and Solid Waste Amendments of 1984, [PL 98-616] and the Federal Facility Compliance Act of 1992)	40 CFR Parts 240 - 280	

a. **Requirements**. Four primary laws have been passed governing the handling and disposal of hazardous materials, chemicals, substances, and wastes. The two statutes of most importance to the FAA in proposing actions to construct and operate facilities and navigational aids are the Resource Conservation and Recovery Act (RCRA) (as amended by the Federal Facilities Compliance Act of 1992) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (also known as Superfund). RCRA governs the generation, treatment, storage, and disposal of hazardous wastes. CERCLA provides

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for cleanup of any release of a hazardous substance (excluding petroleum) into the environment. FAA actions to fund, approve, or conduct an activity may require consideration of hazardous material and solid waste impacts in NEPA documentation. NEPA documents prepared in support of project development should include an appropriate level of review regarding the hazardous nature of any materials or wastes to be used, generated, or disturbed by the proposed action, as well as the control measures to be taken. The CEQ memorandum on pollution prevention and the National Environmental Policy Act encourages early consideration, for example, during scoping, of opportunities for pollution prevention. FAA should, to the extent practicable, include pollution prevention considerations in the proposed action and its alternatives; address pollution prevention in the environmental consequences section; and disclose in the record of decision the extent to which pollution was considered. A discussion of pollution prevention may also be appropriate in an EA. Consideration of these issues in evaluating the effects of proposed actions should begin with an understanding of the following three terms:

Hazardous Material - any substance or material that has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce (49 CFR Part 172, Table 172.101). This includes hazardous substances and hazardous wastes.

Hazardous Waste - under the Resource Conservation and Recovery Act (RCRA) a waste is considered hazardous if it is listed in, or meets the characteristics described in 40 CFR Part 261, including ignitability, corrosivity, reactivity, or extraction procedure toxicity.

Hazardous Substance - any element, compound, mixture, solution, or substance defined as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and listed in 40 CFR Part 302. If released into the environment, hazardous substances may pose substantial harm to human health or the environment.

b. FAA Responsibilities. The FAA must comply with applicable pollution control statutes and requirements that may include, but may not be limited to, those listed in Appendix 2 of Order 1050.10B, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

In accordance with Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, an Environmental Due Diligence Audit (EDDA) shall be conducted to evaluate subject properties for potential hazardous substances contamination that could result in future FAA liabilities.

FAA actions to fund or approve airport layout plans for terminal area development may also require consideration of solid waste impacts in NEPA documentation. A preliminary review should indicate if the projected quantity or type of solid waste generated or method of collection or disposal will be appreciably different than would be the

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case without the action. Special attention shall be given to the control of hazardous waste.

NEPA documents should include appropriate information as described below.

(1) The environmental document should demonstrate that the FAA (or airport sponsor as appropriate) has determined whether hazardous wastes as defined in 40 CFR Part 261 (RCRA) will be generated, disturbed, transported or treated, stored or disposed, by the action under consideration. If so, management of these wastes is regulated by 40 CFR Parts 260-280 and transportation is governed by 49 CFR Parts 171-199. To the extent that the existence of hazardous wastes affects phasing of project construction, analysis of alternatives and consideration of mitigation measures, the means for compliance with applicable regulations must be discussed. It may be helpful to briefly discuss the means for compliance with applicable regulations in the NEPA documentation. For example, operators of activities that would cause hazardous waste must obtain a RCRA hazardous waste generator identification number from EPA or an authorized State.

(2) The document should analyze alternatives considering applicable permitting requirements, and in the case of direct actions or funding, Federal and State guidelines and regulations on procurement of recycled or recyclable productions, the source separation and recycling of recyclable products and solid waste storage, transport, or disposal.

(3) The document should analyze the cost and feasibility of alternatives regarding the avoidance or use of hazardous materials, hazardous wastes, recycled materials, recyclable products, and any related need for permits, remediation, storage, transport, or disposal.

(4) The document should indicate the presence of any sites within the action area listed or under consideration for listing on the National Priorities List (NPL) established by EPA in accordance with CERCLA. NEPA documentation should include a discussion of the impact of any NPL or NPL candidate sites on the action and/or impacts of the action on any NPL or NPL candidate sites. NEPA documentation should also identify sites in the vicinity that have been designated RCRA Solid Waste Management Units (SWMUs) and that may impact or be impacted by the action.

(5) The NEPA documentation should reflect that consultation with the appropriate State agency (or EPA) has been initiated. If a formal agreement has been reached, it should be included in the document itself or incorporated by reference, as appropriate. In many cases, construction may not commence until a formal agreement between the FAA (or action sponsor) and the State agency (or EPA) has been executed.

(6) The NEPA documentation, i.e., EIS, Record of Decision, and FAA construction contracts should include a provision that in the event previously unknown contaminants are discovered during construction, or a

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spill occurs during construction, work should stop until the National Response Center is notified. Their number is (800) 424-8802.

c. Analysis of Significant Impacts. Generally, additional information or analysis is needed only if significant problems are anticipated with respect to meeting the applicable local, State, or Federal laws and regulations on hazardous or solid waste management. Additional data may include results of any further consultation with affected agencies and measures to be taken to minimize the impacts. Disposal that would adversely affect water quality or other environmental resources may be discussed under those sections of the environmental analysis addressing affected resources, with the hazardous material section cross-referencing those sections. Actions that involve property listed (or potentially listed on) the NPL are considered significant by definition. In other cases, only a significant unresolved issue may warrant additional analysis in an EIS.

The cost and feasibility of any necessary remediation of hazardous waste contamination should be considered and for guidance on considering existing environmental contamination issues associated with proposed actions to acquire land consult Order 1050.19, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions.

For guidance on design, construction, and operational compliance of FAA facilities with pollution control statutes, the following FAA orders should be consulted:

(1) Order 1050.10B, Prevention, Control, and Abatement of Environmental Pollution at FAA Facilities.

(2) Order 1050.14A, Polychlorinated Biphenyls (PCB) in the National Airspace System.

(3) Order 1050.15A, Underground Storage Tanks at FAA Facilities.

(4) Order 1050.18, Chlorofluorocarbons and Halon Use at FAA Facilities.

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10. HISTORICAL, ARCHITECTURAL, ARCHEOLOGICAL, AND CULTURAL RESOURCES

[THIS SECTION REFLECTS THE MAJOR REVISIONS TO 36 CFR PART 800 ISSUED MAY 18, 1999]

Statute	Regulation	Oversight Agency
Laws Governing National Historic Preservation Programs and National Historic Landmarks:		
Historic Sites Act of 1935 [16 U.S.C. 461-467] [PL 74-292 (1935)]		National Park Service
National Historic Preservation Act of 1966, as amended [16 U.S.C. 470, 470 note] [PL 102-575 (1992)]	36 CFR Parts 60, 61, 62.1 (National Natural Landmarks),63, 65,65.1 (National Historic Landmarks), 68, 73 (World Heritage Program, 78 36 CFR Part 800, as revised, May 18, 1999, effective June 17, 1999	National Park Service Advisory Council on Historic Preservation State Historic Preservation Officer
Statute	**Regulation**	**Oversight Agency**
Laws Governing the Federal Archeology Program:		
Antiquities Act of 1906 [16 U.S.C. 431, 432, 433] [PL 59-209 (1906)]	43 CFR Part 3 25 CFR Part 261	Department of Interior
Archaeological and Historic Preservation Act of 1974, as amended [16 U.S.C. 469-469c] [PL 89-665]	Guidelines for Archeology and Historic Preservation: Standards and Guidelines (DOI), (48 FR 44716, September 29, 1983) 36 CFR Part 68	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service

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Statute	Regulation	Oversight Agency
Laws Governing the Federal Archeology Program:		
Archaeological Resources Protection Act of 1979, as amended [16 U.S.C. 470aa-470mm] [PL 96-95 (1979)]	43 CFR Parts 3 and 7 36 CFR Part 79 25 CFR Parts 261 and 262	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service
Native American Graves Protection and Repatriation Act of 1990 [25 U.S.C. 3001] [PL 101-601 (1990)]	43 CFR Part 10 25 CFR Section 262.8 36 CFR Part 79	Departmental Consulting Archeologist and Archeological Assistance Program, National Park Service
Other Major Federal Historic Preservation Laws		
American Indian Religious Freedom Act of 1978 [42 U.S.C. 1996, 1996 note] [PL 95-341 (1978)]	43 CFR Sections 7.7 and 7.32 25 CFR Section 262.7	
Executive Order 13007, Indian Sacred Sites		
Executive Order 11593, Protection and Enhancement of the Cultural Environment		

a. **Requirements**. Several laws apply to this category of impact. The major laws include the National Historic Preservation Act (NHPA) of 1966, as amended, which establishes the Advisory Council on Historic Preservation (ACHP). Section 110 governs Federal agencies responsibilities to preserve and use historic buildings; identify, evaluate, and nominate eligible properties under the control or jurisdiction of the agency to the National Register; give full consideration in planning to potentially affected historic properties; consult on preservation-related activities with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector; and comply with the consultation and public notice requirements of Section 106, the professional standards of Section 112, and the confidentiality requirements of Section 314.

The Archaeological Resources Protection Act (ARPA) is triggered by the presence of archeological resources on Federal or Indian lands. The

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Archeological and Historic Preservation Act of 1974 provides for the survey, recovery, and preservation of significant scientific, pre-historical, historical, archeological, or paleontological data when such data may be destroyed or irreparably lost due to a Federal, Federally licensed, or Federally funded action. The DOI's *Standards and Guidelines* were published in the Federal Register (48 FR 44716, September 29, 1983) to advise Federal agencies on the manner in which this latter law will be implemented. Requirements are specified under subparagraph (c) of the Archeological and Historic Preservation Act of 1974.

The Native American Graves Protection and Repatriation Act (NAGPRA) is triggered by the possession of human remains or cultural items by a Federally funded repository or by the discovery of human remains or cultural items on Federal or tribal lands and provides for the inventory, protection, and return of cultural items to affiliated Native American groups. Most of the historic and archeological preservation laws require consultation with Native Americans. Permits are required for intentional excavation and removal of Native American cultural items from Federal or tribal lands. The Act includes provisions that, upon inadvertent discovery of remains, the action will cease in the area where the remains were discovered, and the FAA official will protect the materials and notify the appropriate land management agency. For additional information see the Advisory Council's policy statement of June 11, 1993, on *Consultation with Native Americans Concerning Properties of Traditional Religious and Cultural Importance*.

The Antiquities Act of 1906 was the first general law providing protection for archeological resources. It protects all historic and prehistoric sites on Federal lands and prohibits excavation or destruction of such antiquities without the permission (antiquities permit) of the Secretary of the department having jurisdiction. It also authorizes the President to declare areas of public lands as national monuments and to reserve or accept private lands for that purpose.

The Historic Sites Act of 1935 declares as national policy the preservation for public use of historic sites, buildings, objects, and properties of national significance. It gives the Secretary of the Interior authority to make historic surveys, to secure and preserve data on historic sites, and to acquire and preserve archeological and historic sites. This act also establishes the National Historic Landmarks program for designating properties having exceptional value in commemorating or illustrating the history of the United States. It gives the Secretary of the Interior broad powers to protect nationally significant historic properties, including the Secretary's authority to establish and acquire nationally significant historic sites.

The American Indian Religious Freedom Act of 1978 requires consultation with Native American groups concerning proposed actions on sacred sites on Federal land or affecting access to sacred sites. It establishes Federal policy to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their right to free exercise of their religion. It allows these peoples to access sites, use and possess sacred objects, and freedom to worship through ceremonial and

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traditional rites. In practical terms, the act requires Federal agencies to consider the impacts of their actions on religious sites and objects that are important to Native Americans, including Alaska Natives, and Native Hawaiians, regardless of the eligibility for the National Register of Historic Places.

Executive Order 11593, Protection and Enhancement of the Cultural Environment, (36 FR 8921, May 13, 1971; reprinted in 16 U.S.C. 470 note), and Order DOT 5650.1, Protection and Enhancement of the Cultural Environment, November 20, 1972, require that Federal plans and programs contribute to the preservation and enhancement of sites, structures, and objects of historic, architectural, or archaeological significance.

Permits/Certificates: Various statutes, such as the Antiquities Act of 1906 (Section 3), NAGPRA (Section 3(c)), and ARPA (Section 4), require permits.

b. FAA Responsibilities. The State or Tribal Historic Preservation Officer (SHPO/THPO) and other appropriate sources, must be consulted for advice early in the environmental process. See 36 CFR Part 800 which governs the Section 106 consultation process under NHPA and encourages coordination between Section 106 and other statutes and with environmental and planning reviews under State or local ordinances. (Undertakings that have the potential to affect historic properties under Section 106 constitute an extraordinary circumstance requiring an EA even if the project normally qualifies as a categorical exclusion under NEPA. Findings of no historic properties present or affected or no historic properties adversely affected under NHPA Section 106 support determinations of no use (either constructive or physical) under DOT Section 4(f)). See also specific requirements in 36 CFR Part 800 and ACHP guidance for public involvement during the consultation process.

The FAA official determines whether the proposed action is an " undertaking," as defined in 36 CFR 800.16(y) and whether it is a type of activity that has the potential to cause effects on historic properties. If the agency determines, and the SHPO/THPO concurs, that the action is not an undertaking or is an undertaking but does not have the potential to an effect on historic properties, a historical or cultural resource survey is not necessary and the FAA may issue a determination that the action is not an undertaking or has no effect. If the action is an undertaking and may have an effect, then the first step is to identify the area of potential effect (APE) and the historical or cultural resources within it (see *Secretary's Standards and Guidelines for Identification*).

<u>Determination of Area of Potential Effect (APE):</u> It is the FAA's responsibility to determine the APE. This determination is made generally in consultation with the appropriate SHPO(s)/THPO(s). APE means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties are subsequently identified within the APE. The ACHP and the SHPO/THPO may provide technical advice.

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Identification and Evaluation Process: The FAA must survey the APE to identify properties potentially eligible or listed on the National Register of Historic Places. If any eligible or listed property is identified within the area of the proposed action's APE, the ACHP's regulations, *Protection of Historic Properties* (36 CFR Part 800) will be consulted and followed. Additional information may be obtained from the FAA's Federal (Historic) Preservation Officer in the Office of Environment and Energy and through cultural resources surveys in the APE.

Traditional cultural places (TCPs) may be eligible for listing on the National Register of Historic Places and thus may become the subject of Section 106 consultation following the procedures in 36 CFR part 800 and National Park Service Bulletin 38 on " Identifying Traditional Cultural Places." The National Park Service Bulletin 38 identifies the National Register criteria for determining whether a place qualifies as a TCP under the National Historic Preservation Act. (Other Bulletins are available to assist in identifying other types of historic properties. Many of these are on file with the FAA Federal Preservation Officer in the Office of Environment and Energy.) The FAA may obtain necessary information to apply the criteria by informally consulting. If informal consultation does not resolve issues relating to identification of properties as National Register eligible or the determination of effect, then the FAA must follow the procedures for identification and analysis outlined in the Secretary of the Interior's Standards and Guidelines.

Note that if a TCP is also a sacred site for a tribe, regardless of whether it is the subject of Section 106 consultation, the FAA must consult the tribe under the American Indian Religious Freedom Act of 1978, and the E.O. 13007, Indian Sacred Sites.

If human remains occur at the site, NAGPRA applies. Various archeological statutes, including ARPA and State, local and tribal laws and ordinances may also apply. Criminal laws and the need to preserve evidence may also be involved when human remains are found. Consistent with FAA security directives, contact the FAA Federal Historic Preservation Officer, SHPO, or THPO to coordinate with the designated counterpart Federal, State, or Tribal law enforcement officials if criminal activity is suspected.

If the SHPO/THPO concurs with the FAA's determination regarding eligibility of a resource for inclusion in the National Register, then the consultation moves to the next step. If the SHPO/THPO does not concur, the FAA must seek a determination of eligibility from the Keeper of the National Register (DOI). The Keeper of the National Register is responsible for issuing formal determination of National Register eligibility when FAA and the SHPO/THPO can't agree on a resource's eligibility for the National Register. (See also 36 CFR Part 63.) Any person can request ACHP review of an agency's findings related to identification of historic properites; evaluation of historic significance; and finding that no historic properties are present. As a result of such a request, the ACHP may request the FAA to seek a formal determination from the Keeper. This is called a " Determination of Eligibility" (DOE).

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If no properties have been identified within the APE (i.e., the area or areas in where the undertaking has the potential to alter the characteristics that qualify or may qualify a property for inclusion in the National Register of Historic Places), and no resources have been identified that are subject to ARPA, NAGPRA, American Indian Religious Freedom Act (AIRFA), Antiquites Act, Section 303 of the amended Department of Transportation Act (known as Section 4(f)), the Archeological and Historic Preservation Act, E.O. 13007, Indian Sacred Sites, or other laws covering specific types of cultural resources, then no further analysis is needed.

Effects Finding: It is the FAA's responsibility to make a finding of " no historic properties present or affected" or " no historic properties adversely affected" after applying the criteria of effect to historic properties in the APE and considering the views of the consulting parties and the public.

To assess effects of the undertaking on identified historic properties located in the area of potential effect, the FAA applies the Criteria of Effect listed in 36 CFR Part 800 in consultation with the SHPO/THPO. If the criteria in 36 CFR Part 800 indicate and the SHPO/THPO agrees that the action would not affect any listed or eligible property, then a finding of no historic properties present or affected accompanied by the SHPO's/THPO's letter and any documentation 36 CFR Part 800 requires must be sent to the ACHP with a notice to that effect and be included in the environmental document.

No agreement on findings of no effect or no adverse effect: If the SHPO(s)/THPO(s) disagree with the FAA's finding of no historic properties present or affected or no historic properties adversely affected (No Adverse Effect), then the process moves to the next stage in which an adverse effect is presumed and negotiations are begun to identify mitigation measures.

If the SHPO/THPO disagrees with the FAA's finding of no historic properties present or affected or no historic properties adversely affected (No Adverse Effect), then the dispute may be referred to the ACHP. Supporting documentation for a finding of No Adverse Effect together with the written views of the SHPO/THPO will be forwarded to the ACHP for review by the Executive Director. Under 36 CFR Part 800, any person can request ACHP review of an agency finding of No Adverse Effect. If ACHP does not agree with a No Adverse Effect finding and the FAA does not accept ACHP recommended changes, an Adverse Effect finding occurs.

If an adverse effect on properties is indicated, a finding of Adverse Effect and the Memorandum of Agreement (MOA) will be included in the EA or EIS with supporting documentation. If the consulting parties agree on an alternative to avoid or satisfactorily mitigate adverse effects, a MOA will be executed specifying how the proposed action will proceed to avoid or mitigate the adverse effects. For more information concerning drafting MOA's, consult the ACHP's *Preparing Agreement Documents* (PAD). A finding of Adverse Effect triggers further consultation among Federal

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agency, SHPO/THPO, and other interested parties to consider means to avoid or minimize effects on historic properties. Mitigation can include data collection according to the Secretary's Guidelines prior to destruction or modification of the resource. The ACHP must be notified of the potential for adverse effect and may participate in consultation. The results of consultation concerning the action's adverse effects on an eligible or listed property are included in the MOA. If a finding of Adverse Effect cannot be avoided through mitigation or action modification, further consultation and analysis will be necessary.

Planning for Unanticipated Discovery: In projects especially involving excavation or ground-disturbing activities which may result in unanticipated discovery of potentially eligible historic or archeological resources, the FAA should develop a plan for addressing impacts on these properties and include this plan in the MOA, or the EA or EIS prepared for the action. The MOA may include provision for unanticipated discovery and include provisions to halt construction. When the FAA has developed such a plan and then discovers historic properties after completing Section 106 requirements, the FAA follows the plan that was approved during the Section 106 consultation and thereby meets its Section 106 requirements regarding the newly discovered properties. The FAA should include a commitment in the EA/FONSI or EIS/ROD to halt construction in the immediate vicinity of the discovered properties and implement the plan if new or additional historic properties are discovered after work has begun on a project. If the FAA has not prepared a plan to address discovery of unanticipated historic properties, then the FAA must afford the SHPO/THPO, the ACHP, and interested parties an opportunity to comment on effects to these newly discovered properties in one of several ways. See 36 CFR Part 800 for additional information.

Programmatic agreements: When an undertaking is going to be repeated many times, e.g., the decommissioning of a particular type of building, the FAA may negotiate a programmatic agreement (PA) with the ACHP. A PA may also be negotiated with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO) if the undertaking will be repeated in several different States (see 36 CFR 800). The FAA may work through the National Association of Tribal Historic Preservation Officers (NATHPO) to facilitate coordination with tribes. A PA may also be negotiated with the ACHP and the NCSHPO and counterpart tribal organization, if an undertaking is complex, wide in scope, and the effects are not known precisely. Typically, the FAA must be able to describe the undertaking, including the timeframe and whether the undertaking will be staged. For example, as studies are completed, the APE and the types of expected effects as well as the potential for mitigation must be identified before the ACHP will agree to the PA. For more information see 36 CFR 800.13 and the ACHP's *Preparing Agreement Documents*.

The FAA may proceed without agreement on mitigation, i.e., without a MOA or PA, but first the FAA must seek ACHP comment. The ACHP can send the request back to the FAA with the comment that it is premature to request ACHP comments until the FAA can provide more documentation. If the FAA has made a good faith attempt to identify eligible properties, determine

effects, and negotiate an agreement on mitigation but has determined that agreement is unlikely, the ACHP may convene a panel of ACHP members and hold public hearings before preparing its comments. Typically, the ACHP will ask the FAA to pay for the cost of the panel's travel and other expenses related to the hearings. ACHP comments are directed to the FAA Administrator. The FAA Administrator must then respond to the ACHP comments before proceeding. This responsibility cannot be delegated.

c. Significant Impact Thresholds. The consultation process includes consideration of feasible and prudent alternatives to avoid adverse effects on National Register listed or eligible properties; of mitigation measures; and of accepting adverse effects. The FAA has the final judgment on whether the appropriate action choice is an EIS or a FONSI. Advice from the ACHP and the SHPO/THPO may assist the FAA in making this judgment.

d. Analysis of Significant Impacts. If the consulting parties agree that the alternative would not avoid or mitigate the adverse impacts but that it is in the public interest to proceed with the proposed action, a MOA shall be executed. This MOA may specify recording, salvage, or other measures that shall be taken to minimize adverse impacts before the proposed action proceeds. It is likely that, in this circumstance, the impact on National Register or eligible properties will be considered significant and require the preparation of an EIS.

The FAA makes the final decision on whether to prepare an EIS. If the FAA is already preparing a draft EIS because of other significant impacts, this draft EIS should discuss impacts on historic resources and can be submitted as the preliminary case report, if appropriately identified as such and if the FAA so requests in the cover letter transmitting the draft EIS and requesting comments. Unless accompanied by such a request, circulation of the draft EIS does not constitute a request for ACHP comments pursuant to Section 106 of NHPA and 36 CFR Part 800.

The ACHP may be a cooperating agency when the preparation of an EIS is needed to address significant impacts on historic, archeological, and cultural resourcrs. Information developed for and during the consultation process will be sufficient for purposes of EIS documentation. The final EIS shall include comments of the ACHP and a copy of any MOA. (If a MOA has been executed prior to circulation of a draft EIS, the MOA shall be included in the draft). Within 90 days after carrying out the terms of a MOA, the FAA is required to report to all signatories on the actions taken to comply with the MOA.

11. LIGHT EMISSIONS AND VISUAL IMPACTS

Statute	Regulation	Oversight Agency
See requirements below		

a. **Requirements.** A description of potential impacts due to light emissions or visual impacts associated with a Federal action may be necessary. Consideration should be given to impacts on people and properties covered by Section 106 or DOT Section 303 (formerly, 4(f)).

Permits/Certificates: Not Applicable.

b. **FAA Responsibilities.**

Light Emissions. The FAA official considers the extent to which any lighting associated with an action will create an annoyance among people in the vicinity or interfere with their normal activities. Because of the relatively low levels of light intensity compared to background levels associated with most air navigation facilities (NAVAIDS) and other airport development actions, light emissions impacts are unlikely to have an adverse impact on human activity or the use or characteristics of the protected properties. Information will be included in the environmental document whenever the potential for annoyance exists, such as site location of lights or light systems, pertinent characteristics of the particular system and its use, and measures to lessen any annoyance, such as shielding or angular adjustments.

Visual Impacts. Visual, or aesthetic, impacts are inherently more difficult to define because of the subjectivity involved. Aesthetic impacts deal more broadly with the extent that the development contrasts with the existing environment and whether the community jurisdictional agency considers this contrast objectionable. Public involvement and consultation with appropriate Federal, State, local, and tribal agencies may help determine the extent of these impacts. The art and science of analyzing visual impacts is continuously improving and the FAA official should consider, based on scoping or other public involvement, the degree to which available tools should be used to more objectively analyze subjective responses to proposed visual changes.

c. **Analysis of Significant Impacts.** When an action is determined to have significant light or visual-related impacts, use the following applicable instructions:

Light Emissions. The EIS description of potential annoyance from airport lighting and measures to minimize the effects should be documented in a similar fashion in an EIS to that in an EA. Further consideration may concentrate on previously unconsidered mitigation measures and alternatives. It is possible that the FAA official will judge that a special lighting study is warranted.

Visual Impacts. The impact discussion will normally include appropriate presentation of the application of design, art, architecture and

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landscape architecture in mitigating adverse visual and other impacts and encouraging enhancement of the environment.

12. NATURAL RESOURCES AND ENERGY SUPPLY

Statute	Regulation	Oversight Agency
See requirements below		

a. Requirements. FAA Order 1053.1, Policies and Procedures for Energy Planning and Conservation, provides for assessing energy demands.

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. For purposes of the EA, the proposed action will be examined to identify any proposed major changes in stationary facilities or the movement of aircraft and ground vehicles that would have a measurable effect on local supplies of energy or natural resources. If there are major changes, power companies or other suppliers of energy will be contacted to determine if projected demands can be met by existing or planned source facilities. The use of natural resources other than for fuel need be examined only if the action involves a need for unusual materials or those in short supply. Therefore, evaluation of significant energy use for major construction actions is important.

For most actions, changes in energy demands or other natural resource consumption will not result in significant impacts. If the EA identifies problems such as demands exceeding supplies, additional analysis may be required in an EIS. Otherwise, it may be assumed that impacts are not significant.

c. Analysis of Significant Impacts. Analysis in an EIS includes detail needed to fully explain the degree of the problem and measures to be taken to minimize the impact. Measures such as more efficient airfield design, ground access improvements, or energy efficient building design will be considered and described where applicable and incorporated in the action to the extent possible. The Department of Energy (DOE) may be a cooperating agency and be of assistance in determining additional specific analysis needed and in judging the seriousness of impacts.

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13. **NOISE**

Statute	Regulation	Oversight Agency
49 U.S.C. § 47501-47507 (Aviation Safety and Noise Abatement Act of 1979, as amended) 49 U.S.C. § 40101, et seq., as amended by PL 103-305 (Aug. 23, 1994) (The Federal Aviation Act of 1958) The Control and Abatement of Aircraft Noise and Sonic Boom Act of 1968 49 U.S.C. § 47101, et seq., as amended by PL 103-305 (Aug. 23, 1994) (The Airport and Airway Improvement Act)	14 CFR Part 150 Noise Control and Compatibility Planning for Airports Advisory Circular, 150/5020 14 CFR Part 161 Notice and Approval of Airport Noise and Access Restrictions	Federal Aviation Administration (FAA)
49 U.S.C. § 2101 et seq. (Airport Noise and Capacity Act of 1990) 49 U.S.C. § 44715 (The Noise Control Act of 1972)		EPA

a. Requirements. For aviation noise analysis, the FAA has determined that the cumulative noise energy exposure of individuals to noise resulting from the operation of an airport must be established in terms of yearly day/night average sound level (DNL). An initial noise analysis during the environmental assessment process should be accomplished to determine whether further, more detailed analysis is necessary.

Permits/Certificates. Not applicable.

b. FAA Responsibilities. If significant noise impacts are expected, the FAA official must prepare a detailed noise analysis as part of an EIS in accordance with the following requirements. An EIS need not be prepared if the proposed action incorporates mitigation that reduces the noise impact to below significant noise impact threshold levels.

All detailed noise analyses must be performed using the most current version of the FAA's Integrated Noise Model (INM) and/or Heliport Noise Model (HNM) to develop noise exposure contours at and around airports and heliports. Use of an equivalent methodology and computer model must receive prior written approval from the FAA's Office of Environment and Energy (AEE).

EA and EIS preparers will provide input documentation with one copy of the INM/HNM input files used in the noise analyses and the corresponding

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case echo reports to the FAA official on electronic media specified by that official. All computer model input data should be collected early in the environmental process and should reasonably reflect current and forecasted conditions relative to the proposed action and alternatives

All noise analyses must be performed using the FAA's INM and/or HNM standard and default data. Preceedence evaluation with FAA screening methodologies e.g., Area Equivalent Method (AEM) and Air Traffic Noise Screening (ATNS), may be appropriate. Use of equivalent methodologies must receive prior written approval from AEE. If equivalent methodologies are approved, a description of additional, non-standard, or non-default data must be submitted along with a copy of AEE's approval.

c. Significant Impact Thresholds. FAA has determined that a significant noise impact would occur if a detailed noise analysis indicates that the proposed action results in an increase within the DNL 65 dB contour of DNL 1.5 dB or greater on any noise sensitive area.

d. Analysis of Significant Impacts. For proposed actions which result in a general overall increase in daily aircraft operations or the use of larger/noisier aircraft, as long as there are no changes in ground tracks or flight profiles, the initial analysis may be performed using the FAA's Area Equivalent Method (AEM) computer model. The time of day is also part of the equation used in the AEM method. If the AEM calculations indicate that the proposed action would result in less than a 17 percent (approximately a DNL 1 dB) increase in the DNL 65 dB contour area, it may be concluded that there would be no significant impact over noise sensitive areas and that no further noise analysis is required. If the AEM calculations indicate an increase of 17 percent or more, or if the proposed action is such that use of the AEM is not appropriate, then the proposed action must be analyzed using the INM or HNM to determine if significant noise impacts will result.

The determination of significance must be obtained through the use of INM or HNM noise contours and/or grid point analysis along with local land use information and general guidance contained in Appendix A of 14 CFR Part 150. Special consideration may need to be given to whether Part 150 land use categories are appropriate for evaluating noise impact on properties protected under Section 4(f) of the DOT Act (recodified as 49 U.S.C. 303).

In accordance with the 1992 FICON (Federal Interagency Committee on Noise) recommendations, examination of noise levels below DNL 65 dB may be required if determined to be appropriate after application of the FICON screening procedure (FICON p.3-5). If screening shows that noise sensitive areas at or above DNL 65 dB will have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise-sensitive areas between DNL 60-65 dB having an increase of DNL 3 dB or more due to the proposed action. If the DNL 65 dB screening calls for further analysis between DNL 60-65 dB, the FAA shall conduct a supplemental noise analysis of noise sensitive areas between 60-65 dB to identify those areas projected to have an increase of DNL 3 dB or more as a

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result of the action. The FAA then uses this information during its consideration of potential mitigation for those areas (FICON p. 3-7).

The INM or HNM will be used to produce the following information:

(1) Noise exposure contours at the DNL 75 dB, DNL 70 dB, and DNL 65 dB levels.

(2) Grid point analysis of areas within the DNL 65 dB contour to identify noise sensitive areas where noise will increase by DNL 1.5 dB.

(3) Grid point analysis of areas within the DNL 60-65 dB contours to identify noise sensitive areas where noise will increase by DNL 3 dB only when DNL 1.5 dB increases are documented within the DNL 65 dB contour.

The noise analysis will be conducted to reflect current conditions and forecast conditions for all reasonable alternatives, including the preferred and no action alternatives. This analysis should include maps, aerial photographs, and other means to depict land uses within the noise impact area. The addition of flight tracks is helpful in illustrating where the aircraft normally fly. Illustrations shall be large enough and clear enough to be readily understood.

Differences in the DNL contours and grid point analysis will be determined by comparing the following modeling scenarios:

(1) Current conditions versus the proposed action, and

(2) Future conditions with and without the proposed action. Future conditions will be examined for a period at least 5 years beyond when the proposed action occurs, or is constructed.

If the above comparisons show a DNL 1.5 dB or greater increase over a noise sensitive area within the DNL 65 dB contour, a level of significant noise impact has been reached.

The following information will be disclosed in the EIS as a minimum for each modeling scenario that was analyzed:

(1) The number of people living within each noise contour in or above DNL 65 dB by community, including the net increase or decrease in the number of people exposed to that level of noise. (Use of maps that depict population and streets to location a community or noise sensitive area is recommended.)

(2) The number of people that would be included in the DNL 65 dB contour as a result of the proposed action, and the number of people taken out of the DNL 65 dB contour by the proposal.

(3) The location and number of schools, churches, parks, recreation areas, wildlife refuges, and other noise sensitive areas within the DNL 65 dB contour.

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(4) Mitigation measures in effect or proposed and there relationship to the proposal.

If conditions warrant, additional analysis to supplement DNL may be necessary and will be considered on a case-by-case basis. Supplemental noise analyses are most often used to determine aircraft noise impacts at specific noise-sensitive locations or for noise-sensitive situations.

If the proposal is the result of a recommended noise mitigation measure included in an FAA-approved 14 CFR Part 150 noise compatibility program, the noise analysis developed in the program will be incorporated in the EA or EIS and will be considered sufficient for noise analysis purposes.

14. SECONDARY (INDUCED) IMPACTS

Statute	Regulation	Oversight Agency
See requirements below		

Major development proposals often involve the potential for induced or secondary impacts on surrounding communities. When such potential exists, the EA shall describe in general terms such factors. Examples include: shifts in patterns of population movement and growth; public service demands; and changes in business and economic activity to the extent influenced by the airport development. Induced impacts will normally not be significant except where there are also significant impacts in other categories, especially noise, land use, or direct social impacts. In such circumstances, an EIS may be needed to analyze.

15. SOCIOECONOMIC IMPACTS

Statute	Regulation	Oversight Agency
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601] [PL 91-528]	FAA Advisory Circular 150/5100-17 49 CFR Part 24 FAA Order 5100.37	
(As amended by the Surface Transportation and Uniform Relocation Act Amendments of 1987) [PL 100-117]		
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	DOT Order 5610.2	

a. Requirements. If acquisition of real property or displacement of persons is involved, 49 CFR Part 24 implementing the Uniform

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Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended must be met. Otherwise, the FAA, to the fullest extent possible, observes all local and State laws, regulations, and ordinances concerning zoning, transportation, economic development, housing, etc. when planning, assessing, or implementing the proposed action. (This requirement does not cover local zoning laws, set-back ordinances, and building codes because the Federal government is exempt from them). Additional requirements and responsibilities are established by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. (See DOT Order 5610.2, Environmental Justice).

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. The FAA official consults with local transportation, housing, and economic development, relocation and social agency officials, and community groups regarding the social impacts of the proposed action. The principal social impacts to be considered are those associated with relocation or other community disruption, transportation, planned development, and employment. The environmental document provides estimates of the numbers and characteristics of individuals and families to be displaced, the impact on the neighborhood and housing to which relocation is likely to take place, and an indication of the ability of that neighborhood to provide adequate relocation housing for the families to be displaced. The environmental document includes a description of special relocation advisory services to be provided, if any, for the elderly, handicapped, or illiterate regarding interpretation of benefits or other assistance available.

c. Significant Impact Thresholds. Factors to be considered in determining impact in this category include, but are not limited to, the following:

(1) Extensive relocation of residents is required, but sufficient replacement housing is unavailable.

(2) Extensive relocation of community businesses, and that relocation would create severe economic hardship for the affected community(ies).

(3) Disruptions of local traffic patterns that substantially reduce the levels of service of the roads serving the airport and its surrounding community(ies).

(4) A substantial loss in community tax base.

d. Analysis of Significant Impacts. This category is triggered when the potential for significant impact exists, because of relocation impacts and any adverse and disproportionately high impact on minority or low income communities, other community disruption, is identified. In these cases, additional analysis is needed to describe the degree of impact and measures to minimize such adverse effects. Such actions do not always trigger preparation of an EIS preparation.

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If an insufficient supply of general available relocation housing is indicated, a thorough analysis of efforts made to remedy the problem will be reflected in the EIS including, if necessary, provision for housing of last resort as authorized by Section 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act. If business relocation would cause appreciable economic hardship on the community, if significant changes in employment would result directly from the action, or if community disruption is considered substantial, the EIS will include a detailed explanation of the effects and the reasons why significant impacts cannot be avoided.

When the EA indicates substantial induced or secondary effects directly attributable to the proposal, a detailed analysis of such effects will be included in the EIS. As pertinent and to the extent known or reasonably foreseeable, such factors as effects on regional growth and development patterns, and spin-off jobs created will be described.

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16. WATER QUALITY

Statute	Regulation	Oversight Agency
Federal Water Pollution Control Act, as amended, known as the Clean Water Act [33 U.S.C. 1344] [PL 92-500] (As amended by the Clean Water Floodplains Floodways Act of 1977) [33 U.S.C. 1252] [PL 95-217] Safe Drinking Water Act [42 U.S.C. 300f et seq.] Fish and Wildlife Coordination Act of 1980 [16 U.S.C. 661-666c] [PL 85-624, 72 Stat. 563]	40 CFR Parts 110-112, 116, 117, 122, 129, 136, and 403	Environmental Protection Agency
49 USC 47106(c)(1)(B), former Airport and Airways Improvement Act of 1982, Section 509(7)(A)		

a. Requirements. The Federal Water Pollution Control Act, as amended (commonly referred to as the Clean Water Act) provides the authority to establish water quality standards, control discharges, develop waste treatment management plans and practices, prevent or minimize the loss of wetlands, location with regard to an aquifer or sensitive ecological area such as a wetlands area, and regulate other issues concerning water quality.

If the proposed Federal action would impound, divert, drain, control, or otherwise modify the waters of any stream or other body of water, the Fish and Wildlife Coordination Act applies, unless the project is for the impoundment of water covering an area of less than ten acres. The Fish and Wildlife Coordination Act requires the responsible Federal official to consult with the Fish and Wildlife Service (FWS) and the applicable State agency to identify means to prevent loss or damage to wildlife resources resulting from the proposal.

If there is the potential for contamination of an aquifer designated by the Environmental Protection Agency (EPA) as a sole or principal drinking water resource for the area, the FAA official needs to consult with the EPA regional office as required by section 1424(e) of the Safe Drinking Water Act, as amended.

Permits/Certificates:

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(1) To comply with 49 USC 47106(c)(1)(b), formerly, Section 509(b)(7)(A) of the 1982 Airport Improvement Act, an airport sponsor proposing construction of a new airport, a new runway, or a major runway extension must obtain a water quality certificate from the State in which such airport projects would be located. The FAA can not approve these projects, unless the sponsor has obtained that certificate. Environmental documents prepared for these projects must contain evidence from the governor or the agency responsible for protecting water quality that the project would be located, designed, constructed, and operated in compliance with applicable water quality standards.

Also, regardless of the type of airport project proposed, project proponents applying for a NPDES permit or a Section 404 permit must obtain a water quality certificate (WQC) to comply with Section 401 of the Clean Water Act. Section 401 requires issuance of a WQC as part of the permit issuance process.

(2) A National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act is required for point-source discharges into navigable waters. A Section 404 permit is required to place dredged or fill material in navigable waters including jurisdictional wetlands. A Section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters.

(3) Other State and local permits pertaining to water quality also may be required.

b. FAA Responsibilities. The EA includes sufficient description of a proposed action's design, mitigation measures, and construction controls to demonstrate that State water quality standards and any Federal, State, and local permit requirements will be met. Consultation with the Federal, State, or local officials will be undertaken if there is the potential for contamination of an aquifer designated by the EPA as a sole or principal drinking water resource for the area pursuant to Section 1424(e) of the Safe Drinking Water Act, as amended. Consultation with appropriate officials is necessary to determine which permits apply. The EA reflects the results of consultation with regulating and permitting agencies and with agencies that must review permit applications, such as the FWS, the Army Corps of Engineers, and State and local officials which may have specific concerns. Such consultation should be started at an early stage of the EA. The FAA Official must ensure that the applicable water quality certificate is issued before FAA approves the proposed action.

c. Significant Impact Threshold. Water quality regulations and issuance of permits will normally identify any deficiencies in the proposal with regard to water quality or any additional information necessary to make judgments on the significance of impacts. If the EA and early consultation show that there is a potential for exceeding water quality standards, identify water quality problems that cannot be avoided or satisfactorily mitigated, or indicate difficulties in obtaining required permits, an EIS may be required.

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d. Analysis of Significant Impacts. When the thresholds indicate the potential exists for significant water quality impacts, additional analysis in consultation with State or Federal agencies responsible for protecting water quality will be necessary. These agencies may require specific information or studies.

In the MOA between the DOT and the Department of the Army on Section 404 Permit Processing, there is a provision for elevating permit applications with the Department of the Army. When an Army District Engineer proposes to deny permit or condition one that would cause substantial, unacceptable conditions to the DOT agency, the FAA official shall advise the appropriate FAA program office in Washington. That office will provide whatever follow-up action may be necessary at the Washington level to resolve the differences.

17. WETLANDS

Statute	Regulation	Oversight Agency
Clean Water Act, Section 404 Rivers and Harbors Act of 1899, Section 10 Executive Order 11990, Protection of Wetlands	33 CFR Parts 320 - 330 DOT Order 5660.1A, Preservation of the Nation's Wetlands	Army Corps of Engineers

a. Requirements. Executive Order (E.O.) 11990, DOT Order 5660.1A, the Rivers and Harbors Act of 1899, and the Clean Water Act address activities in wetlands. E.O. 11990 requires Federal agencies to ensure their actions minimize the destruction, loss, or degradation of wetlands. It also assure the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, funding, and operation of transportation facilities and projects (7 CFR Part 650.26, August 6, 1982). DOT Order 5660.1A sets forth DOT policy that transportation facilities should be planned, constructed, and operated to assure protection and enhancement of wetlands.

Typically, the FAA or an airport sponsor applies for a Section 404 permit for projects requiring dredge or fill activities in jurisdictional waters after the NEPA document has been approved. There are benefits, however, to developing the permit application earlier in the process. Time savings and reduced controversy may outweigh the extra effort required to address Section 404 considerations as an integral part of the NEPA process. When the two processes are integrated effectively, the Corps' approval of the permit could be concurrent or closely follow with FAA's approval. The Army Corps of Engineers could adopt the FAA's final NEPA document when making a 404 permit decision, thereby avoiding the need to prepare additional NEPA documents. For further information see 33 CFR Part 320, *General*

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Regulatory Policies (COE), 33 CFR Part 325, Appendix B, *NEPA Implementation Procedures for the Regulatory Program*, Chapter 11 of the Federal Highway Administration guidance cites 40 CFR Sections 230, 80, *Regulatory Program: Applicant Information*, pamphlet EP 1145-2-1, May 1985, US Army Corps of Engineers; 40 CFR Section 1500.2, and E.O. 12291.

On December 13, 1996, the Army Corps of Engineers published a final rule reissuing and substantially revising, the nationwide permit program (NWP) under the Clean Water Act.

The FAA promotes wetland banking as a mitigation tool for aviation-related projects that must occur in wetlands due to aeronautical requirements (e.g., unavoidable construction of a runway in a wetland due to prevailing wind). The FAA has developed a policy supporting the use of a wetland banking mitigation strategy (internal Letter of Agreement, dated July 1996). Wetland mitigation banking provides a way to mitigate wetland impacts <u>before</u> those impacts occur. Purchasing credits from a bank does not give the purchaser title to wetlands tracts that comprise a bank, however, it does fulfill the requirements of law and is cost effective. Rather, the purchase is simply a payment to the wetland banker for wetland mitigation services that the bank provides. The purchase of credits from an approved bank signifies that the Section 404 permittee has satisfied its permit-required mitigation obligations. Copies of this policy are available from FAA's Office of Airport Planning and Programming, Community and Environmental Needs Division, APP-600, 800 Independence Ave., S.W., Washington, D.C. 20591.

Permits/Certificates:

(1) A Section 404 permit is required to place dredged or fill material in navigable waters, including wetlands, and a Section 10 permit under the Rivers and Harbors Act of 1899 is required for obstruction or alteration of navigable waters.

(2) Other State and local permits pertaining to wetlands may also be required.

b. FAA Responsibilities. Early review of proposed actions will be conducted with agencies with special interest in wetlands. Such agencies include State and local natural resource and wildlife agencies, the FWS, the NMFS, the Corps of Engineers, and EPA. This review may be combined as much as possible with the State and local officials. Specific consultation is required under the Fish and Wildlife Coordination Act with the FWS and the State agency having administration over the wildlife resources.

If the action requires an EA, but it would not affect wetlands, the EA should contain a sentence stating that fact. In that case, no wetland impact analysis is needed.

If there is uncertainty about whether an area is a wetland, the local district office of the Army Corps of Engineers or a certified wetland delineation specialist must be contacted for a delineation determination

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(or the Natural Resources Conservation Service (NRCS) formerly SCS to delineate wetlands on agricultural lands). The EA includes information on the location, types, and extent of wetland areas that might be affected by the proposed action. This information can be obtained from the FWS or State or local natural resource agency(ies).

If the action would affect wetlands and there is a practicable alternative that avoids the wetland, this alternative becomes the environmentally preferred alternative. The EA should state that the original project would have affected wetlands, but selection of the practicable alternative enabled the project proponent to avoid the wetlands.

If the action would affect wetlands and there is no practicable alternative, all practical means should be employed to minimize the wetland impacts due to runoff, construction, sedimentation, land use, or other reason. The EA or EIS must contain a description of proposed mitigations, with the understanding that a detailed mitigation plan must be developed to the satisfaction of the 404 permitting agency and those agencies having an interest in the affected wetland.

Impacts of wetlands can be assessed by using the function and values of the wetlands area as a basis to determine significance. If wetlands functions are large in number and the value of these functions is high, it would be appropriate to conduct further study as part of an EIS. For example, the action would substantially alter the hydrology, vegetation, or soils needed to sustain the functions and values of the affected wetlands or the wetlands it supports. Conversely, if wetlands functions are few in number and the value of these functions is low, an EA concluding in a FONSI would be appropriate. For example, the action would not cause substantial increases in sedimentation or siltation in wetlands or waters connected to the affected wetland.

c. Significant Impact Thresholds. A significant impact would occur when the proposed action causes <u>any</u> of the following:

(1) The action would adversely affect the function of a wetland to protect the quality or quantity of municipal water supplies, including sole source, potable water aquifers.

(2) The action would substantially alter the hydrology needed to sustain the functions and values of the affected wetlands.

(3) The action would substantially reduce the affected wetland's ability to retain flood waters or storm-associated runoff, thereby threatening public health, safety and/or welfare (this includes cultural, recreational, and scientific resources important to the public).

(4) The action would adversely affect the maintenance of natural systems that support wildlife and fish habitat and/or economically-important timber, food, or fiber resources in the affected or surrounding wetlands.

*

(5) The action would promote development of secondary activities or services that would affect the resources mentioned in items (1) through (4) in this section.

(6) The action would be inconsistent with applicable State wetland strategies.

d. Analysis of Significant Impacts: An agency having expertise in wetland impacts or resources may indicate that the action has potential significant wetland impacts. The FAA Official shall consult with that agency and, as necessary, the FWS, the Corps of Engineers, EPA, or NRCS (if wetlands are on agricultural lands), and State and local natural resource or wildlife agencies to make a determination on severity of wetland impacts. If the action is on tribal lands, then the FAA official must consult with tribal natural resource and wildlife representatives. Any of these agencies may become a cooperating agency due to their expertise or jurisdiction. Permitting agencies may also become cooperating agencies. To the extent practical, the FAA official will ensure that the environmental document meets the needs of the consulted agencies as well as those of the FAA. Scoping is encouraged to meet the needs of the permitting and cooperating agencies. Detailed analysis should include the following, as applicable:

(1) Considerations specified in E.O. 11990, Protection of Wetlands.

(2) An opinion should be issued, based on the above considerations, on the action's overall effect on the survival and quality of the wetlands.

(3) Aeronautical safety, transportation objectives, economics, and other factors bearing on the problem.

(4) Further consideration of the practicability of any alternatives.

(5) Inclusion of all practicable measures to minimize harm.

(6) Pursuant to the Fish and Wildlife Coordination Act, the FAA applies the instructions contained above.

For any action which entails new construction located in wetlands, a specific finding should be made including: (1) there is no practicable alternative to construction in the wetland, and (2) that all practicable measures to minimize harm have been included. The proposed finding should be included in the final EIS or FONSI.

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18. WILD AND SCENIC RIVERS

Statute	Regulation	Oversight Agency
Wild and Scenic Rivers Act [16 U.S.C. 1271 et seq.] [PL 90-542]	36 CFR Part 297, Subpart A FR (September 7, 1982)	Department of Interior

a. Requirements. The Wild and Scenic Rivers Act, as amended, describes those river areas eligible to be included in a system afforded protection under the Act. DOI and the Department of Agriculture (USDA) maintain a National Inventory of river segments that appear to qualify for inclusion in the National Wild and Scenic River System.

The President's 1979 Environmental Message Directive on Wild and Scenic Rivers (August 2, 1979) directs Federal agencies to avoid or mitigate adverse effects on rivers identified in the Nationwide Inventory as having potential for designation under the Wild and Scenic Rivers Act.

Section 12 of the Act requires a Federal agency with jurisdiction over any lands which include, border upon, or are adjacent to any river included, or under consideration for inclusion in the System to take action necessary to protect such river in accordance with the purposes of the Act. In addition, Federal agencies are required to cooperate with the Secretary of the Interior and appropriate State agencies for the purpose of eliminating or minimizing pollution in protected Inventory rivers. All agencies shall, as part of their normal environmental review processes, consult with the DOI (National Park Service (NPS)) prior to taking any actions which could effectively foreclose or downgrade wild, scenic, or recreational river status of rivers in the Inventory.

Permits/Certificates: Not Applicable.

b. FAA Responsibilities. As soon as it appears that the proposed action could affect a National Inventory river, the responsible Federal official should contact DOI for verification. If DOI indicates that an Inventory river could be affected, consult with them for guidance as to avoiding or minimizing impacts.

If no Inventory river is adversely affected or the impact is not considered severe enough to preclude inclusion of the affected river segment in the Wild and Scenic River System or downgrade its classification (e.g., from wild to recreational), no further analysis is necessary. Consultation with DOI will determine whether or not the impact on any National Inventory river is significant.

*

c. Analysis of Significant Impacts. When consultation with DOI leads to a determination that the effects on the National Inventory river are significant, or would preclude inclusion in the Wild and Scenic River System or downgrade its classification, the FAA invites the NPS and any affected land management agencies to be cooperating agencies. If NPS does not respond to such request for assistance within 30 days, then the FAA proceeds as otherwise planned, taking care as best it can to minimize adverse effects on the National Inventory river.

U.S. Department
of Transportation

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Attachment 3
12/21/83

ORDER

DOT 5610.1C

9-18-79

SUBJECT: PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

INTRODUCTION.

1. PURPOSE. This Order establishes procedures for consideration of environmental impacts in decision making on proposed Department of Transportation (DOT) actions. The Order provides that information on environmental impacts of proposed actions will be made available to public officials and citizens through environmental impact statements, environmental assessments or findings of no significant impact. These documents serve as the single vehicle for environmental findings and coordination.

2. CANCELLATION. DOT 5610.1B, PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS, dated September 30, 1974.

3. AUTHORITY. This Order provides instructions for implementing Section 102(2) of the National Environmental Policy Act of 1969, as amended, (42 USC 4321-4347, hereinafter "NEPA") and the Regulations for Implementing NEPA issued by the Council on Environmental Quality, 11-29-78 (40 CFR 1500-1508); Sections 2(b) and 4(f) of the Department of Transportation Act of 1966 (49 USC 1653, hereinafter "the DOT Act"); Sections 309 and 176 of the Clean Air Act, as amended (42 USC 7401 et seq.); Section 106 of the National Historic Preservation Act of 1966 (16 USC 470, hereinafter "the Historic Preservation Act"); Sections 303 and 307 of the Coastal Zone Management Act of 1972 (43 USC 1241); Section 2 of the Fish and Wildlife Coordination Act (16 USC 661 et seq.); Section 7 of the Endangered Species Act, as amended (16 USC 1533); the Federal Water Pollution Control Act, as amended (33 USC 1314 et seq.); Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; and various Executive Orders relating to environmental impacts. In addition, the Order provides instructions for implementing, where environmental statements are required, Sections 138 and 109 of Federal-aid highway legislation (Title 23, USC, hereinafter "the Highway Act); Sections 16 and 18(a) of the Airport and Airway Development Act of 1970 (49 USC 1716, 1718, hereinafter "the Airport Act"); and Section 14 of the Urban Mass Transportation Act of 1964 (49 USC Section 1601 et seq., hereinafter "the Urban Mass Transportation Act").

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National Transportation Safety Board (Info)

OPI: Office of Environment and Safety

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Attachment 1
State and Localities with EIS Requirements

Attachment 2
Form and Content of Environmental Impact Statements

1. BACKGROUND.

The National Environmental Policy Act (NEPA) establishes a broad national policy to promote efforts to improve the relationship between man and his environment. NEPA sets out certain policies and goals concerning the environment and requires that to the fullest extent possible, the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with those policies and goals.

Section 102 of NEPA is designed to insure that environmental considerations are given careful attention and appropriate weight in all decisions of the Federal Government. Section 102(2)(C) requires that all agencies of the Federal Government shall

> include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on —
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Section 102(2)(A) requires all agencies of the Federal Government to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decision making which may have an impact on man's environment..."

The Council on Environmental Quality (CEQ) issued regulations for implementation of the procedural provisions of NEPA (40 CFR Parts 1500-1508) on 11-29-78. The CEQ regulations apply uniformly to and are binding upon all Federal agencies, and direct each agency to adopt implementing procedures which relate the CEQ regulations to the specific needs of that agency's programs and operating procedures.

This Order implements the mandate of NEPA, as defined and elaborated upon by CEQ's regulations, within the programs of the Department of Transportation. The Order is not a substitute for the regulations promulgated by CEQ, nor does it repeat or paraphrase the language of those regulations. Rather, the Order supplements the CEQ regulations by applying them to DOT programs. Therefore, all operating administrations and Secretarial Offices shall comply with both the CEQ regulations and the provisions of this Order.

This Order provides instructions for implementation of relevant environmental laws and executive orders in addition to NEPA. The environmental process established by this Order is intended to implement the Department's policy objective of one-stop environmental processing. To the maximum extent possible, a single process shall be used to meet requirements for environmental studies, consultations and reviews.

2. POLICY AND INTENT.

a. It is the policy of the Department of Transportation to integrate national environmental objectives into the missions and programs of the Department and to:

(1) avoid or minimize adverse effects wherever possible;

(2) restore or enhance environmental quality to the fullest extent practicable;

(3) preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites;

(4) preserve, restore and improve wetlands;

(5) improve the urban physical, social and economic environment;

(6) increase access to opportunities for disadvantaged persons; and

(7) utilize a systematic, interdisciplinary approach in planning and decision making which may have an impact on the environment.

b. The purpose of the environmental procedures in this Order is to provide Department officials, other decision makers, and the public, as part of the decision making process, with an understanding of the potential effects of proposed actions significantly affecting the quality of the human environment. The environmental review process is to be used to explore and document alternative actions that will avoid or minimize adverse impacts.

c. The environmental impact statement (EIS), finding of no significant impact (FONSI, formerly "negative declaration") and determination that a proposed action is categorically excluded serve as the record of compliance with the policy and procedures of NEPA and the policy and procedures of other environmental statutes and executive orders. To the maximum extent possible, all environmental studies, reviews and consultations shall be coordinated into a single process, and compliance with all applicable environmental requirements shall be reflected in the EIS or FONSI.

3. PLANNING AND EARLY COORDINATION.

a. The identification and evaluation of the social, economic and environmental effects of a proposed action and the identification of all reasonable measures to mitigate adverse impacts shall be initiated in the early planning stages of the action, and shall be considered along with technical and economic studies. Assessment of environmental impacts should be a part of regional transportation system planning and broad transportation program development.

General criteria for identification of social, economic, and environmental impacts in DOT planning programs are set forth in subparagraph 10.e., DOT 1130.4, Intermodal Planning Groups and Unified Planning Work Programs, of 2-12-79. Other guidance may be identified in the implementing procedures of the administrations.

b. Where the DOT action is initiated by a State or local agency or a private applicant, the responsible operating administration shall assure that the applicant is advised of environmental assessment and review requirements and that consultation with appropriate agencies and interested parties is initiated at the earliest possible time. (See paragraph 20.b. below.)

c. Existing administration procedures for early consultation and citizen participation shall be modified to incorporate the scoping process (CEQ 1501.7). Implementing procedures shall assure that significant issues are identified and that all interested parties have an opportunity to participate in the scoping and early consultation process.

d. Where the proposed action is initiated by a State and may have significant impacts on a Federal land management entity or any other State, the responsible Federal official shall provide early notice to and solicit the views of that Federal land management entity or other State.

4. ENVIRONMENTAL PROCESSING CHOICE.

a. Actions covered. Except as provided in subparagraph c. below, the requirements of this Order apply to, but are not limited to, the following: all grants, loans, loan guarantees, construction, research activities, rulemaking and regulatory actions, certifications, licenses, permits, approval of policies and plans (including those submitted to the Department by State or local agencies), adoption or implementation of programs, legislation proposed by DOT, and any renewals or reapprovals of the foregoing. (CEQ 1508.18(b).)

b. Environmental Impact Statements. An EIS shall be prepared for any proposed major Federal action significantly affecting the environment. (See also: CEQ 1508.27, and paragraphs 7 and 20 of this Order.)

c. Categorical Exclusions. The following actions are not Federal actions with a significant impact on the environment, and do not require either an environmental assessment or an environmental impact statement:

(1) Administrative procurements (e.g. general supplies) and contracts for personal services;

(2) Personnel actions (e.g. promotions, hirings);

(3) Project amendments (e.g. increases in costs) which do not significantly alter the environmental impact of the action;

(4) Operating or maintenance subsidies when the subsidy will not result in a change in the effect on the environment; and

(5) Other actions identified by the administrations as categorical exclusions pursuant to paragraph 20.

d. Environmental Assessment. An environmental assessment is a document concisely describing the environmental impacts of a proposed action and its alternatives. If a decision has not been made to prepare an EIS and a proposed action has not been classified as a categorical exclusion, an environmental assessment shall be prepared. The results of an environmental assessment shall be used to determine whether an EIS or FONSI shall be prepared. (See CEQ 1508.9 and 1506.5(b).)

e. Finding of No Significant Impact (FONSI). If it is determined following preparation of the environmental assessment that the proposed action will not have a significant impact on the environment, a FONSI shall be prepared. (See paragraph 5.)

5. FINDING OF NO SIGNIFICANT IMPACT.

a. The FONSI may be attached to an environmental assessment or the environmental assessment and FONSI may be combined into a single document.

b. Except as provided in subparagraph c. below, a FONSI or environmental assessment need not be coordinated outside the originating office, but must be made available to the public upon request. Notice of availability shall be provided (see suggestions for public notice in CEQ 1506.6(b)). In all cases, notice shall be provided to State and areawide clearinghouses.

c. In the circumstances defined in CEQ 1501.4(e)(2), a copy of the environmental assessment should be made available to the public for a period of not less than 30 days before the finding of no significant impact is made and the action is implemented. Consultation with other Federal agencies concerning section 4(f) of the DOT Act, the Historic Preservation Act, section 404 permits and other Federal requirements should be accomplished prior to or during this period.

Vertical line denotes change.

6. LEAD AGENCIES AND COOPERATING AGENCIES.

a. The appropriate Operating Administration or Secretarial Office shall serve as the lead agency or joint lead agency for preparing and processing environmental documents when that element has the primary Federal responsibility for the action.

b. An applicant should to the fullest extent possible serve as a joint lead agency if the applicant is a State agency with state-wide jurisdiction, or is a State or local agency, and the proposed action is subject to State requirements comparable to NEPA. (See CEQ 1506.2.)

c. Coordination with cooperating agencies shall be initiated early in project planning and shall be continued through all stages of development of the appropriate environmental document.

d. If an agency requested to be a cooperating agency replies that it will not participate, the agency shall be provided a copy of the draft EIS. If the agency makes adverse comments on the draft EIS (including the adequacy of the EIS or consideration of alternatives or of mitigating measures), or if the agency indicates that it may delay or withhold action on some aspect of the proposal, the matter may be discussed with CEQ.

e. Where a DOT element is requested to be a cooperating agency, it shall make every effort to participate.

7. PREPARATION AND PROCESSING OF DRAFT ENVIRONMENTAL STATEMENTS.

a. Scope of Statement. The action covered by the statement should have independent significance, and must be broad enough in scope to avoid segmentation of projects and to insure meaningful consideration of alternatives. The scope of the statement should be decided upon during the scoping process. (See also CEQ 1502.20 and paragraph 7.g. below.) A general class of actions may be covered in a single EIS when the environmental impacts of all the actions are similar.

Vertical line denotes change.

b. Timing of Preparation of Draft Statements. Draft statements shall be prepared at the earliest practical time prior to the first significant point of decision in the program or project development process. They should be prepared early enough in the process so that the analysis of the environmental effects and the exploration of alternatives are meaningful inputs to the decision making process. The implementing guidance (see paragraph 20) shall specify the point at which draft statements should be prepared for each type of action.

c. Interdisciplinary Approach and Responsibilities for EIS Preparation. An interdisciplinary approach should be used throughout planning and preparation of environmental documents to help assure a systematic evaluation of reasonable alternative courses of action and their potential social, economic, and environmental consequences. At a minimum, operating administrations should have staff capabilities adequate to evaluate environmental assessments and environmental documents so that DOT can take responsibility for their content. Secretarial Offices may request assistance from P-30. If the necessary disciplines are not represented on the staff of the administration, the responsible official should obtain professional services from other Federal, State or local agencies, universities, or consulting firms.

d. Preparation of Draft. Draft EISs shall be prepared concurrently with and integrated with environmental analyses required by other environmental review laws and executive orders. To the maximum extent possible, the EIS process shall be used to coordinate all studies, reviews and consultations. (See CEQ 1502.25.) The draft EIS should reflect the result of the scoping/early consultation process. Further guidance on compliance with the various environmental statutes is included in Attachment 2.

e. Format and Content. Further guidance on the format and content of EISs is provided in Attachment 2.

f. Circulation of the Draft Environmental Impact Statement.

(1) The originating operating administration or Secretarial Office shall circulate the draft environmental statement or summary to the parties indicated in paragraph 8 below. Copies of the draft EIS should be filed with the Environmental Protection Agency (EPA). (See also CEQ 1506.9 and 1506.10.)

Vertical line denotes change.

(2) If a State agency with statewide jurisdiction is functioning as a joint lead agency and has prepared the draft EIS, the draft statement may be circulated by the State agency after the operating administration has approved it.

g. Tiering. Tiering of EISs as discussed in CEQ 1502.20 is encouraged when it will improve or simplify the environmental processing of proposed DOT actions. Preparation of tiered EISs should be considered for complex transportation proposals (e.g. major urban transportation investments, airport master plans, aid to navigation systems, etc.) or for a number of discrete but closely related Federal actions. The first tier EIS should focus on broad issues such as mode choice, general location and areawide air quality and land use implications of the alternative transportation improvements. System planning activities should encompass environmental studies, as noted in subparagraph 3.a., and the first tier EISs should use information from these system planning studies and appropriate corridor planning and other planning studies. A second tier, site specific EIS should focus on more detailed project impacts and detailed mitigation measures (e.g. addressing detailed location, transit station locations, highway interchange configurations, etc.).

8. INVITING COMMENTS ON THE DRAFT EIS.

The draft EIS shall be circulated with an invitation to comment to (1) all agencies having jurisdiction by law or special expertise with respect to the environmental impact involved; (2) interested parties; (3) EPA Office of Federal Activities; (4) the Assistant Secretary for Policy and International Affairs (P-1); and (5) other elements of DOT, where appropriate. A reasonable number of copies shall be provided to permit agencies and interested parties to comment expeditiously.

a. State and Local Review.

(1) Review of the proposed action by State and local agencies, when appropriate, shall be obtained as follows:

(a) Where review of draft Federal development projects, and of projects assisted under programs listed in Attachment D to revised OMB Circular A-95 (as implemented

by DOT 4600.4C, Evaluation, Review and Coordination of DOT Assistance Programs and Projects, of 4-12-79), takes place prior to preparation of a draft environmental statement, comments of the reviewing agencies on the environmental effects of the proposed project shall be attached to the environmental statement. Copies of the draft and final environmental statements shall be sent to clearinghouses and to the applicant whose project is the subject of the statement.

(b) Project applicants or administrations shall obtain comments directly from appropriate State and local agencies, except where review is secured by agreement through A-95 clearinghouses. Comments shall be solicited from all affected local governments.

(2) At the time a draft or final environmental statement is filed with EPA, the availability of the statement should be announced through advertisements in local newspapers and other effective methods. Copies of EISs shall be provided to the public upon request and made available at appropriate public places.

b. Review of EISs Prepared Pursuant to Section 102(2)(D) of NEPA. If the draft EIS is prepared by a State agency with statewide jurisdiction, and the proposed action will affect another State or Federal land management entity, the draft EIS shall be circulated to the affected State or Federal land management entity.

9. REVIEW OF ENVIRONMENTAL STATEMENTS PREPARED BY OTHER AGENCIES.

The purpose of DOT review and comment on environmental statements drafted by other agencies is to provide a competent and cooperative advisory and consultative service.

a. Comments should be limited to the impacts on areas within the Department's functional responsibility, jurisdiction by law or expertise.

b. DOT projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that interrelationships can be discussed in the final statement. In such cases, the DOT agency should consider serving as a joint lead agency or cooperating agency.

c. Other agencies will generally be requested to forward their draft environmental statements directly to the appropriate regional offices of the Department. There are several types of proposals, however, that should be referred by regional offices to Departmental headquarters for comment. These generally include the following:

(1) Actions with national policy implications;

(2) Legislation, regulations having national impacts, or national program proposals.

Draft EISs in these categories are to be referred to P-1 for preparation of DOT comments and, where appropriate, to the headquarters of the operating administrations. In referring these matters to headquarters, the regional office is encouraged to prepare a proposed Departmental response.

d. Draft EISs for actions which have impact on only one region or which do not fall within subparagraph c. above should be reviewed by regional offices of DOT administrations. Comments should be forwarded directly to the office designated by the originating agency. If the receiving office believes that another DOT office is in a better position to respond, it should send the statement to that office. If more than one administration is commenting at the regional level, the comments shall be coordinated by the Regional Representative or a designee.

e When appropriate, the commenting office should coordinate a response with other Departmental offices having special expertise in the subject matter. For example, comments on projects affecting

the transportation of hazardous materials or natural gas and liquid-products pipelines should be coordinated with the Research and Special Programs Administration, Materials Transportation Bureau, and water resources projects should be coordinated with the U.S. Coast Guard, Ports and Waterways Planning Staff (G-WS/73).

f. Copies of comments on another agency's EIS shall be provided to the requesting agency, to P-1, and to the Regional Representative if the comment is prepared by a regional office.

10. PREDECISION REFERRALS TO THE COUNCIL ON ENVIRONMENTAL QUALITY.

The following specific procedures apply to referrals involving DOT elements:

a. DOT Lead Agency Proposals.

(1) An operating administration or Secretarial Office receiving a notice of intended referral from another agency with respect to a proposed DOT action shall provide P-30 with a copy of the notice. Every effort should be made to resolve the issues raised by the referring agency prior to processing the final EIS. These efforts should be documented in the EIS. P-1 will be available to assist in any such resolution, and should be notified of the results.

(2) In the event of an actual referral, the lead agency shall obtain P-1's concurrence in the response to CEQ.

b. DOT Referrals to CEQ on other Agencies' Proposals.

(1) If upon reviewing a draft from another Federal agency, an operating administration or Secretarial Office believes a referral will be necessary, it should so advise P-30. If P-30 agrees, it will advise the lead agency that DOT intends to refer the proposal to CEQ unless the proposal is changed. P-30 will coordinate DOT comments on the draft EIS, including the notice of intended referral.

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(2) Environmental referrals should be avoided, where possible, through efforts to resolve the issues, after providing notice of intent to refer and prior to the lead agency's filing the final EIS.

(3) In the event that the issues have not been resolved prior to filing of the final EIS with EPA, P-1 will deliver a referral to CEQ not later than 25 calendar days after the final EIS is made available to EPA, commenting agencies, and the public.

(a) Operating administrations and Secretarial Offices should submit proposed referrals to P-1 at least 5 days prior to the 25-day deadline. The proposed referral should include the information specified in section 1504.3(c) of the CEQ regulations.

(b) P-1 will inform the lead agency of the referral and the reasons for it, including a copy of the detailed statement developed pursuant to section 1504.3(c).

II. FINAL ENVIRONMENTAL IMPACT STATEMENTS.

a. Preparation. The final EIS shall identify the preferred alternative, including measures to mitigate adverse impacts. In identifying the preferred alternative, the DOT element should consider the policies stated in paragraph 2 above. Every effort should be made to resolve significant issues raised through circulation of the draft EIS, the community involvement process and consultation with cooperating agencies before the EIS is put into final form for approval by the responsible official. The final statement shall reflect such issues, consultation and efforts to resolve the issues, including an explanation of why any remaining issues have not been resolved.

b. Compliance with other Requirements. The final EIS should reflect that there has been compliance with the requirements of all applicable environmental laws and orders, e.g. section 4(f) of the DOT Act, section 106 of the Historic Preservation Act, section 404 of the Clean Water Act, section 7 of the Endangered Species Act, the DOT Floodplain Management Order (5650.2) and the DOT Wetlands Order (5660.1A). If such compliance is not possible by the time of final EIS preparation, the EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met.

c. Legal Review. All final environmental statements shall be reviewed for legal sufficiency by the Chief Counsel of the operating administration concerned, or by a designee. Final environmental statements prepared within the Office of the Secretary (OST) shall be reviewed for legal sufficiency by the General Counsel (C-1).

d. Approval. Final environmental impact statements may be approved by the Administrator or Secretarial Officer (or a designee) originating the action. For highly controversial final EIS's that require approval or concurrence by the headquarters of the operating administration pursuant to Administration procedures for approval, P-1 and C-1 shall be notified that the final EIS is under review and will be provided a copy of the summary section contained in the final EIS. P-1 and C-1 will also be given at least two weeks notice before approval of the final environmental impact statement. For purposes of this paragraph a proposed Federal action is considered highly controversial when the action is opposed on environmental grounds by a Federal, state, or local government agency or by a substantial number of the persons affected by such action.

e. Availability Pending Approval. Following the initial level of approval by the administration (for example, by the FHWA Division Administrator), proposed final statements should normally be made available for inspection during usual business hours by the public and Federal, State or local agencies. Such statements should carry a notation that the statement is not approved and filed.

f. Availability of Statements to EPA and the Public. After approval, the originating office shall transmit copies of each final statement to EPA in accordance with instructions from EPA. The originating office shall send copies of the final statement to the applicant, P-1 all Federal, State, and local agencies and private organizations which commented substantively on the draft statement or requested copies of the final statement, and to individuals who requested copies.

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g. Implementation of Representations in Environmental Statements. The administrations shall assure, through funding agreements and project review procedures, that applicants carry out any actions to minimize adverse environmental effects set forth in the approved statement. Any significant deviation from prescribed action that may reduce protection to the environment must be submitted for concurrence in accordance with Administration procedures for final EIS approval.

h. Supplemental Statements. The responsible official shall supplement a draft EIS when either: (1) it is determined that a reasonable alternative which is significantly different from alternatives considered in the draft EIS exists and will be considered, or (2) when environmental conditions or data change significantly from those presented in the statement. A final EIS shall be supplemented when substantial changes are made in the proposed action, when conditions or data change significantly from that presented in the statement, or if the responsible official determines that a supplement is necessary for some other reason. (The development of additional data as a proposal moves through the implementation process would not require a supplement if the data does not materially conflict with the data in the EIS.) A supplemental EIS may be prepared to address detailed information which was not available at the time an EIS was prepared and approved, for example, site or project specific impacts which have been discussed only in general terms in a corridor or program EIS. (See also CEQ 1502.20 and paragraph 7.g.) A supplemental statement should be prepared, circulated and approved in accordance with the provisions of the CEQ regulations and paragraphs 7, 8, and 11 of this Order, unless the responsible official believes there are compelling reasons to do otherwise. In such cases, the operating administration or Secretarial Office should consult with CEQ.

12. DETERMINATIONS UNDER SECTION 4(f) OF THE DOT ACT.

a. Any action having more than a minimal effect on lands protected under section 4(f) of the DOT Act will normally require the preparation of an environmental statement. In these cases, the environmental statement shall include the material required by paragraph 4 of Attachment 2. If in the preparation of the final EIS, it is concluded that there is no feasible and prudent alternative to the use of section 4(f) lands, the final EIS shall support a specific determination to that effect, including evidence that there has been all possible planning to minimize harm to the protected lands.

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b. If an environmental statement is not required, the material called for in paragraph 4 of Attachment 2 shall be set forth in a separate document, accompanied by a FONSI or a determination that the section 4(f) involvement is minimal and that the action is categorically excluded. The section 4(f) determination shall be reviewed for legal sufficiency by the Chief Counsel of the operating administration involved, or by a designee. The document must reflect consultation with the Department of the Interior, and where appropriate, the Departments of Agriculture or Housing and Urban Development.

13. RESPONSIBILITY.

Where an operating administration or Secretarial Office serves as lead agency or joint lead agency, it shall be responsible for the scope, objectivity, accuracy and content of EISs and environmental assessments. The EIS or environmental assessment shall be prepared by the operating administration or secretarial office, by a contractor selected by DOT, or by the applicant, pursuant to the provisions of CEQ 1506.2 and 1506.5. In developing implementing instructions, administrations shall note the distinctions made in the CEQ regulations between State agencies with statewide jurisdiction, State and local agencies which must comply with State or local requirements comparable to NEPA, and other applicants. State and local governments with requirements comparable to NEPA are listed in Attachment 1.

14. CITIZEN INVOLVEMENT PROCEDURES.

a. Citizen involvement in the environmental assessment of Departmental actions is encouraged at each appropriate stage of development of the proposed action and should be sought as early as possible. Citizen involvement in the environmental process should be integrated with other citizen involvement procedures to the maximum extent possible. Attempts should be made to solicit the views of the public through hearings, personal contact, press releases, advertisements or notices in newspapers, including minority or foreign language papers, if appropriate, and other methods. A summary of citizen involvement and any environmental issues raised should be documented in the EIS.

b. The administrations' implementing instructions shall provide (1) that interested parties and Federal, State, and local agencies receive early notification of the decision to prepare an environmental

impact statement, including publication of a notice of intent in the Federal Register, and (2) that their comments on the environmental effects of the proposed Federal action are solicited at an early stage in the preparation of the draft impact statement.

c. Administrations are encouraged to develop lists of interested parties at the national, State and local levels. These would include individuals and community, environmental, conservation, public service, education, labor, or business organizations, who are affected by or known to have an interest in the project, or who can speak knowledgeably on the environmental impact of the proposed action.

d. Under OMB Circular A-95, (Revised) Evaluation, Review, and Coordination of Federal Assistance Programs and Projects, and DOT 4600.4C, Evaluation, Review and Coordination of DOT Assistance Programs and Projects, of 4-12-76, a grant applicant must notify the clearinghouse of its intention to apply for Federal program assistance. The administrations' implementing instructions should provide for the solicitation of comments from the clearinghouse on the environmental consequences of the proposed action.

e. Hearings.

(1) In several instances, a public hearing is required by statute as a condition to Federal approval of a proposed action. Even where not required by statute, an informational hearing or meeting may serve as a useful forum for public involvement.

(2) If a public hearing is to be held, the draft EIS or environmental assessment (or environmental analysis where the hearing is held by an applicant which is not a joint lead agency) should be made available to the public at least 30 days prior to the hearing.

f. Interested persons can get information on the DOT environmental process and on the status of EISs issued by the Office of the Secretary from: Deputy Director for Environment and Policy Review (P-32), Department of Transportation, Washington, D.C. 20590, telephone 202- 426-4361.

Each administration shall indicate in its implementing instructions where interested persons can get information or status reports on EISs and other elements of the NEPA process.

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15. PROPOSALS FOR LEGISLATION.

a. Preparation. An EIS shall be prepared and circulated for any legislative proposal, or for any favorable report on proposed legislation, for which DOT is primarily responsible and which involves significant environmental impacts. The administration or Secretarial Office originating the legislation or developing the Departmental position on the report shall prepare the EIS.

b. Processing. The draft EIS shall be cleared with P-1 and submitted by the Assistant General Counsel for Legislation (C-40) to the Office of Management and Budget for circulation in the normal legislative clearance process. The EIS shall be transmitted to Congress no later than 30 days after transmittal of the legislative proposal, and must be available in time for Congressional hearings. Any comments received on the EIS shall be transmitted to Congress. Except as provided by CEQ 1506.8(b)(2), there need not be a final EIS.

16. INTERNATIONAL ACTIONS.

a. Pursuant to Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, the requirements of this Order apply to:

(1) Major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g. the oceans and Antarctica).

(2) Major Federal actions significantly affecting the environment of a foreign nation not participating in the action or otherwise involved in the action.

(3) Major Federal actions significantly affecting the environment of a foreign nation which provide a product or a project producing a toxic emission or effluent, which is prohibited or strictly regulated in the U.S. by Federal law.

(4) Major Federal actions outside the U.S., its territories and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

b. If communication with a foreign government concerning environmental studies or documentation is anticipated, the responsible Federal official shall coordinate such communication with the State Department, through P-1.

17. TIMING OF AGENCY ACTION.

A decision on the proposed action may not be made sooner than the times specified in CEQ 1506.10(b).

a. Requests for reasonable extensions of the review period for the draft EISs shall be granted whenever possible, and particularly when warranted by the magnitude and complexity of the statement or the extent of citizen interest.

b. If an administration or Secretarial Office believes it is necessary to reduce the prescribed time periods for EIS processing, it should request such a reduction from EPA. P-32 should be notified of such a request.

c. Where emergency circumstances make it necessary to take an action with significant environmental impacts without observing the provisions of this Order and the CEQ regulations, the administration or Secretarial Office should consult with CEQ. P-32 should be notified of such consultation.

18. EFFECTIVE DATE.

a. This Order and attachments apply to all draft statements filed by DOT with EPA after 7-30-79, except as provided in paragraph 1506.12 of the CEQ regulations.

b. For final statements whose drafts are filed by 7-30-79 (for FHWA, 11-30-79), paragraph 11 of this Order applies after 7-30-81. In the interim, final EISs shall be processed in accordance with the provisions of DOT 5610.1B.

19. TIME IN EFFECT OF STATEMENTS.

a. The draft EIS may be assumed valid for a period of three years. If the proposed final EIS is not submitted to the approving official within three years from the date of the draft EIS circulation, a written reevaluation of the draft shall be prepared by the responsible Federal official to determine whether the consideration of alternatives, impacts, existing environment and mitigation measures set forth in the draft EIS remain applicable, accurate and valid. If there have been changes in these factors which would be significant in the consideration of the proposed action, a supplement to the draft EIS or a new draft statement shall be prepared and circulated.

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b. If major steps toward implementation of the proposed action (such as the start of construction or substantial acquisition and relocation activities) have not commenced within three years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy and validity of the EIS shall be prepared by the responsible Federal official unless tiering of EISs (as discussed in subparagraph 7.g.) is being used. If there have been significant changes in the proposed action, the affected environment, anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated.

c. If major steps toward implementation of the proposed action have not occurred within five years from the date of approval of the final EIS, or within the time frame set forth in the final EIS, the responsible Federal official shall prepare a written reevaluation of the adequacy, accuracy, and validity of the EIS. This reevaluation shall be processed in accordance with subparagraph 11.d.

d. If the proposed action is to be implemented in phases or requires successive Federal approvals, a written reevaluation of the continued adequacy, accuracy and validity of the EIS shall be made prior to Federal approval of each major stage which occurs more than three years after approval of the final EIS, and a new or supplemental EIS prepared, if necessary.

20. IMPLEMENTING INSTRUCTIONS.

a. Operating administrations shall issue instructions implementing this Order using one of the following options:

(1) An operating administration may issue detailed instructions or regulations which incorporate the points of this Order and the CEQ regulations and provide guidance on applying the environmental process to the administration's programs; or

(2) An operating administration may rely on this Order as its implementing procedures, provided it issues supplementary guidance which at a minimum applies the environmental process to the administration's programs, as described in the following subparagraph.

b. Implementing instructions shall include the following information:

(1) A list of actions which normally require preparation of an EIS.

(2) A list of actions which are not normally major Federal actions significantly affecting the environment and as such do not normally require an environmental assessment or an environmental impact statement (i.e. categorical exclusions). These actions may include, but are not limited to, funding or authorizing: maintenance and modernization of existing facilities; minor safety improvements; equipment purchases; operating expenses; and planning grants which do not imply a project commitment. Instructions should provide for preparation of environmental assessments or EISs, as appropriate, for actions which would otherwise be classified as categorically excluded, but which are likely to involve: (1) significant impacts on the environment; (2) substantial controversy; (3) impacts which are more than minimal on properties protected by section 4(f) and section 106 of the Historic Preservation Act; or (4) inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

(3) Identification of the decision making process, including timing for preparation of a draft and final environmental statement or a FONSI and designation of officials responsible for providing information on the administration's preparation, review and approval of environmental documents.

(4) A description of the public participation process or reference to other administration guidance on the public participation process. (See paragraph 14, public participation.)

(5) A description of the processes to be used to insure early involvement of DOT, other agencies and the public in the environmental review of actions proposed by nonfederal applicants (CEQ 1501.2(d)).

(6) A description of the procedures for assuring implementation of mitigation measures identified in the EIS and the record of decision.

c. Proposed implementing instructions and any substantial amendments thereto shall be submitted to P-1 for review and concurrence. Consultation with CEQ will be assisted by P-1. Proposed and final implementing instructions shall be published in the Federal Register.

FOR THE SECRETARY OF TRANSPORTATION:

Robert L. Fairman
Deputy Assistant Secretary
for Administration

STATES AND LOCALITIES WITH EIS REQUIREMENTS

1. States with Comprehensive Statutory Requirements:

   California
   Connecticut
   Hawaii
   Indiana
   Maryland
   Massachusetts
   Minnesota
   Montana
   New York
   New Jersey
   North Carolina
   South Dakota
   Virginia
   Washington
   Wisconsin
   Puerto Rico

2. States with Comprehensive Executive or Administrative Orders:

   Michigan
   New Jersey
   Texas
   Utah

3. Local EIS requirements:

   Bowie, Maryland
   New York, New York

Source:

Memorandum for NEPA Liaisons from the Council on Environmental Quality, on agency implementing procedures under CEQ's NEPA regulations, dated January 19, 1979. (Appendix D)

FORMAT AND CONTENT OF ENVIRONMENTAL IMPACT STATEMENTS

1. Format.

a. The format recommended in CEQ 1502.10 should be used for DOT EISs:

(a) Cover Sheet
(b) Summary
(c) Table of Contents
(d) Purpose and Need for the Action
(e) Alternatives Including the Proposed Action
(f) Affected Environment
(g) Environmental Consequences
(h) List of Preparers
(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent
(j) Index
(k) Appendices (if any)

b. The cover sheet for each environmental impact statement will include the information identified in CEQ 1502.11 and will be headed as follows:

Department of Transportation

_____
(operating administration)

(Draft/Final) Environmental Impact Statement
Pursuant to Section 102(2)(C), P.L. 91-190

As appropriate, the heading will indicate that the EIS also covers the requirements of section 4(f) of the DOT Act, section 14 of the Mass Transportation Act, and/or sections 16 and 18(a)(4) of the Airport Act.

2. Guidance as to Content of Statements.

a. Environmental impact statements shall include the information specified in CEQ 1502.11 through 1502.18. The following paragraphs of Attachment 2 are intended to be considered, where relevant, as guidance regarding the content of environmental statements.

b. Additional information contained in research reports, guidance on methodology, and other materials relating to consideration of environmental factors should be employed as appropriate in the preparation of EISs and environmental assessments. Examples of such materials include:

U.S. Department of Transportation, Environmental Assessment Notebook Series: Highways, 1975, Report No. DOT P 5600.4, available from the U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 050-000-00109-1;

U.S. DOT, Environmental Assessment Notebook Series: Airports, 1978, Report Number DOT P 5600.5, available from the U.S. Government Printing Office, Washington, D.C. 20402, Stock Number 050-000-00138-5;

U.S. DOT, FAA, Environmental Assessment of Airport Development Actions, 1977, available from the National Technical Information Service, 5284 Port Royal Road, Springfield, Virginia 22161, NTIS Catalog Number ADA-039274; and

U.S. DOT, Guidelines for Assessing the Environmental Impact of Public Mass Transportation Projects, 1979, Report Number DOT P 79 001, available from the National Technical Information Service, Springfield, Virginia 22161.

3. General Content. The following points are to be covered.

a. A description of the proposed Federal action (e.g. "The proposed Federal action is approval of location of highway..." or "The proposed Federal action is approval of a grant application to construct..."), and a statement of its purpose.

b. Alternatives, including the proposed action, and including, where relevant, those alternatives not within the existing authority of the responsible preparing office. Section 102(2)(E) of NEPA requires the responsible agency to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses

of available resources." A rigorous exploration and an objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects, are essential. Sufficient analysis of such alternatives and their environmental benefits, costs, and risks should accompany the proposed action through the review process in order not to foreclose prematurely options which might enhance environmental quality or have less detrimental effects. Examples of such alternatives include: the alternative of not taking any action or of postponing action pending further study; alternatives requiring actions of a significantly different nature which would provide similar benefits with different environmental impacts, e.g. low capital intensive improvements, mass transit alternatives to highway construction; alternatives related to different locations or designs or details of the proposed action which would present different environmental impacts. In each case, the analysis should be sufficiently detailed to reveal comparative evaluation of the environmental benefits, costs, and risks of each reasonable alternative, including the proposed action. Where an existing impact statement already contains such an analysis, its treatment of alternatives may be incorporated, provided such treatment is current and relevant to the precise purpose of the proposed action.

c. Affected environment.

(1) The statement should succinctly describe the environment of the area affected as it exists prior to a proposed action, including other related Federal activities in the area, their interrelationships, and cumulative environmental impact. The amount of detail provided in such descriptions should be commensurate with the extent and expected impact of the action, and with the amount of information required at the particular level of decision making (planning, feasibility, design, etc.).

(2) The statement should identify, as appropriate, population and growth characteristics of the affected area and any population and growth assumptions used to justify the project or program or to determine secondary population and growth impacts resulting from the proposed action and its alternatives (see paragraph 3e(2)). In discussing these population aspects, the statement should give consideration to using the rates of growth in the region of the project contained in the projections compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and the Economic Research Service of the Department of Agriculture (the OBERS projection).

d. The relationship of the proposed action and how it may conform to or conflict with adopted or proposed land use plans, policies, controls, and goals and objectives as have been promulgated by affected communities. Where a conflict or inconsistency exists, the statement should describe the extent of reconciliation and the reasons for proceeding notwithstanding the absence of full reconciliation.

e. The probable impact of the proposed action on the environment.

(1) This requires assessment of the positive and negative effects of the proposed action as it affects both national and international human environment. The attention given to different environmental factors will vary according to the nature, scale, and location of proposed actions. Primary attention should be given in the statement to discussing those factors most evidently impacted by the proposed action.

(2) Secondary and other foreseeable effects, as well as primary consequences for the environment, should be included in the analysis. Secondary effects, such as impacts on existing community facilities and activities inducing new facilities and activities, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated and an assessment made on their effects upon the resource base, including land use, water, and public services, of the area in question.

f. Any probable adverse environmental effects which cannot be avoided (such as water or air pollution, noise, undesirable land use patterns, or impacts on public parks and recreation areas, wildlife and waterfowl refuges, or on historic sites, damage to life systems, traffic congestion, threats to health, or other consequences adverse to the environmental goals set out in section 101(b) of NEPA). This should be a brief summary of those effects discussed in paragraph 3c that are adverse and unavoidable under the proposed action. Included for purposes of contrast should be a clear statement of how all adverse effects will be mitigated.

g. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This discussion should cover the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses, or vice versa, and a discussion of the extent to which the proposed action forecloses future options.

h. Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. This requires identification of unavoidable impacts and the extent to which the action irreversibly curtails the range of potential uses of the environment. "Resources" means not only the labor and materials devoted to an action but also the natural and cultural resources lost or destroyed.

i. An indication of what other interests and considerations of Federal policy are thought to offset the adverse environmental effects of the proposed action identified pursuant to subparagraphs (e) and (f) of this paragraph. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action (as identified in subparagraph (b) of this paragraph) that would avoid some or all of the adverse environmental effects. In this connection, cost-benefit analyses of proposed actions, if prepared, should be attached, or summaries thereof, to the environmental impact statement, and should clearly indicate the extent to which environmental costs have not been reflected in such analyses.

j. A discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process, and the disposition of the issues involved and the reasons therefor. (This section may be added to the final environmental statement at the end of the review process.)

(1) The draft and final statements should document issues raised through consultations with Federal, State, and local agencies with jurisdiction or special expertise and with citizens, of actions taken in response to comments, public hearings, and other citizen involvement proceedings.

(2) Any unresolved environmental issues and efforts to resolve them, through further consultations or otherwise, should be identified in the final statement. For instance, where

an agency comments that the statement has inadequate analysis or that the agency has reservations concerning the impacts, or believes that the impacts are too adverse for approval, either the issue should be resolved or the final statement should reflect efforts to resolve the issue and set forth any action that will result.

(3) The statement should reflect that every effort was made to discover and discuss all major points of view on the environmental effects of the proposed action and alternatives in the draft statement. However, where opposing professional views and responsible opinion have been overlooked in the draft statement and are raised through the commenting process, the environmental effects of the action should be reviewed in light of those views. A meaningful reference should be made in the final statement to the existence of any responsible opposing view not adequately discussed in the draft statement indicating responses to the issues raised.

(4) All substantive comments received on the draft (or summaries of responses from the public which have been exceptionally voluminous) should be attached to the final statement, whether or not each such comment is thought to merit individual discussion in the text of the statement.

k. Draft statements should indicate at appropriate points in the text any underlying studies, reports, and other information obtained and considered in preparing the statement, including any cost-benefit analyses prepared. In the case of documents not likely to be easily accessible (such as internal studies or reports), the statement should indicate how such information may be obtained. If such information is attached to the statement, care should be taken to insure that the statement remains an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross reference.

4. Publicly Owned Parklands, Recreational Areas, Wildlife and Waterfowl Refuges and Historic Sites. The following points are to be covered:

a. Description of "any publicly owned land from a public park, recreational area or wildlife and waterfowl refuge" or "any land from an historic site" affected or taken by the project. This includes its size, available activities, use, patronage, unique or irreplaceable qualities, relationship to other similarly used lands in the vicinity of the project, maps,

plans, slides, photographs, and drawings showing in sufficient scale and detail the project. This also includes its impact on park, recreation, wildlife, or historic areas, and changes in vehicular or pedestrian access.

b. Statement of the "national, State or local significance" of the entire park, recreation area, refuge, or historic site "as determined by the Federal, State or local officials having jurisdiction thereof."

(1) In the absence of such a statement, lands will be presumed to be significant. Any statement of "insignificance" by the official having jurisdiction is subject to review by the Department as to whether such statement is capricious.

(2) Where Federal lands are administered for multiple uses, the Federal official having jurisdiction over the lands shall determine whether the subject lands are in fact being used for park, recreation, wildlife, waterfowl, or historic purposes.

c. Similar data, as appropriate, for alternative designs and locations, including detailed cost estimates (with figures showing percentage differences in total project costs) and technical feasibility, and appropriate analysis of the alternatives, including any unique problems present and evidence that the cost or community disruptions resulting from alternative routes reach extraordinary magnitudes. This portion of the statement should demonstrate compliance with the Supreme Court's statement in the Overton Park case, as follows:

> "The very existence of the statute indicates that the protection of parklands was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached extraordinary magnitudes. If the statutes are to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that the alternative routes present unique problems."

d. If there is no feasible and prudent alternative, description of all planning undertaken to minimize harm to the protected area and statement of actions taken or to be taken to implement this planning, including measures to maintain or enhance the natural beauty of the lands traversed.

(1) Measures to minimize harm may include replacement of land and facilities, providing land or facilities, or provision for functional replacement of the facility (see 49 C.F.R. 25.267).

(2) Design measures to minimize harm; e.g. tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, maintenance of pedestrian or bicycle paths and noise mitigation measures, all reflecting utilization of appropriate interdisciplinary design personnel.

e. Evidence of concurrence or description of efforts to obtain concurrence of Federal, State or local officials having jurisdiction over the section 4(f) property regarding the action proposed and the measures planned to minimize harm.

f. If Federally-owned properties are involved in highway projects, the final statement shall include the action taken or an indication of the expected action after filing a map of the proposed use of the land or other appropriate documentation with the Secretary of the Department supervising the land (23 U.S.C. 317).

g. If land acquired with Federal grant money (Department of Housing and Urban Development open space or Heritage Conservation and Recreation Service land and water conservation funds) is involved, the final statement shall include appropriate communications with the grantor agency.

h. The General Counsel will determine application of section 4(f) to public interests in lands, such as easements, reversions, etc.

i. A specific statement that there is no feasible and prudent alternative and that the proposal includes all possible planning to minimize harm to the "section 4(f) area" involved.

5. Properties and Sites of Historic and Cultural Significance. The statement should document actions taken to preserve and enhance districts, sites, buildings, structures, and objects of historical, architectural, archaeological, or cultural significance affected by the action.

a. Draft environmental statements should include identification, through consulting the State Historic Preservation Officer and the National Register and applying the National Register Criteria (36 C.F.R. Part 800), of properties that are included in or eligible for inclusion in the National Register

of Historic Places that may be affected by the project. The Secretary of the Interior will advise whether properties not listed are eligible for the National Register (36 C.F.R. Part 63).

b. If application of the Advisory Council on Historic Preservation's (ACHP) Criteria of Effect (36 C.F.R. Part 800) indicates that the project will have an effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the draft environmental statement should document the effect. Evaluation of the effect should be made in consultation with the State Historic Preservation Officer (SHPO) and in accordance with the ACHP's Criteria of Adverse Effect (36 C.F.R. Part 800).

c. Determinations of no adverse effect should be documented in the draft statement with evidence of the application of the ACHP's Criteria of Adverse Effect, the views of the appropriate State Historic Preservation Officer, and submission of the determination to the ACHP for review.

d. If the project will have an adverse effect upon a property included in or eligible for inclusion in the National Register of Historic Places, the final environmental statement should include either an executed Memorandum of Agreement or comments from the Council after consideration of the project at a meeting of the ACHP and an account of actions to be taken in response to the comments of the ACHP. Procedures for obtaining a Memorandum of Agreement and the comments of the Council are found in 36.C.F.R. Part 800.

e. To determine whether the project will have an effect on properties of State or local historical, architectural, archaeological, or cultural significance not included in or eligible for inclusion in the National Register, the responsible official should consult with the State Historic Preservation Officer, with the local official having jurisdiction of the property, and, where appropriate, with historical societies, museums, or academic institutions having expertise with regard to the property. Use of land from historic properties of Federal, State and local significance as determined by the official having jurisdiction thereof involves section 4(f) of the DOT Act and documentation should include information necessary to consider a section 4(f) determination (see paragraph 4).

6. Impacts of the Proposed Action on the Human Environment Involving Community Disruption and Relocation.

a. The statement should include a description of probable impact sufficient to enable an understanding of the extent of the environmental and social impact of the project alternatives and to consider whether relocation problems can be properly handled. This would include the following information obtainable by visual inspection of the proposed affected area and from secondary sources and community sources when available.

(1) An estimate of the households to be displaced including the family characteristics (e.g. minorities, and income levels, tenure, the elderly, large families).

(2) Impact on the human environment of an action which divides or disrupts an established community, including, where pertinent, the effect of displacement on types of families and individuals affected, effect of streets cut off, separation of residences from community facilities, separation of residential areas.

(3) Impact on the neighborhood and housing to which relocation is likely to take place (e.g. lack of sufficient housing for large families, doublings up).

(4) An estimate of the businesses to be displaced, and the general effect of business dislocation on the economy of the community.

(5) A discussion of relocation housing in the area and the ability to provide adequate relocation housing for the types of families to be displaced. If the resources are insufficient to meet the estimated displacement needs, a description of the actions proposed to remedy this situation including, if necessary, use of housing of last resort.

(6) Results of consultation with local officials and community groups regarding the impacts to the community affected. Relocation agencies and staff and other social agencies can help to describe probable social impacts of this proposed action.

(7) Where necessary, special relocation advisory services to be provided the elderly, handicapped and illiterate regarding interpretations of benefits, assistance in selecting replacement

housing, and consultation with respect to acquiring, leasing, and occupying replacement housing.

b. This data should provide the preliminary basis for assurance of the availability of relocation housing as required by DOT 5620.1, Replacement Housing Policy, dated 6-24-70,and 49 C.F.R. 25.57.

7. Considerations Relating to Pedestrians and Bicyclists. Where appropriate, the statement should discuss impacts on and consideration to be given in the development of the project to pedestrian and bicycle access, movement and safety within the affected area, particularly in medium and high density commercial and residential areas.

8. Other Social Impacts. The general social groups specially benefitted or harmed by the proposed action should be identified in the statement, including the following:

a. Particular effects of a proposal on the elderly, handicapped, non-drivers, transit dependent, or minorities should be described to the extent reasonably predictable.

b. How the proposal will facilitate or inhibit their access to jobs, educational facilities, religious institutions, health and welfare services, recreational facilities, social and cultural facilities, pedestrian movement facilities, and public transit services.

9. Standards as to Noise, Air, and Water Pollution. The statement shall reflect sufficient analysis of the effects of the proposed action on attainment and maintenance of any environmental standards established by law or administrative determination (e.g. noise, ambient air quality, water quality), including the following documentation:

a. With respect to water quality, there should be consultation with the agency responsible for the State water pollution control program as to conformity with standards and regulations regarding storm sewer discharge, sedimentation control, and other non-point source discharges.

b. The comments or determinations of the offices charged with administration of the State's implementation plan for air quality as to the consistency of the project with State plans for the implementation of ambient air quality standards.

c. Conformity to adopted noise standards, compatible, if appropriate, with different land uses.

10. Energy Supply and Natural Resources Development. Where applicable, the statement should reflect consideration of whether the project or program will have any effect on either the production or consumption of energy and other natural resources, and discuss such effects if they are significant.

11. Floodplain Management Evaluation. When an alternative under consideration encroaches on a base (100-year) floodplain, the statement should describe the anticipated impacts on natural and beneficial floodplain values, any risk to or resulting from the transportation action, and the degree to which the action facilitates additional development in the base floodplain. The necessary measures to address floodplain impacts, including an evaluation of alternatives to avoid the encroachment in appropriate cases, should be described in compliance with Executive Order 11988, "Floodplain Management," and DOT Order 5650.2, "Floodplain Management and Protection."

12. Considerations Relating to Wetlands or Coastal Zones. Where wetlands or coastal zones are involved, the statement should reflect compliance with Executive Order 11990, Protection of Wetlands, and DOT 5660.1A and should include:

    a. Information on location, types, and extent of wetlands areas which might be affected by the proposed action.

    b. An assessment of the impacts resulting from both construction and operation of the project on the wetlands and associated wildlife, and measures to minimize adverse impacts.

    c. A statement by the local representative of the Department of the Interior, and any other responsible officials with special expertise, setting forth his views on the impacts of the project on the wetlands, the worth of the particular wetlands areas involved to the community and to the Nation, and recommendtions as to whether the proposed action should proceed, and, if applicable, along what alternative route.

    d. Where applicable, a discussion of how the proposed project relates to the State coastal zone management program for the particular State in which the project is to take place.

13. Construction Impacts. In general, adverse impacts during construction will be of less importance than long-term impacts of a proposal. Nonetheless, statements should appropriately address such matters as the following, identifying any special problem areas:

    a. Noise impacts from construction and any specifications setting maximum noise levels.

    b. Disposal of spoil and effect on borrow areas and disposal sites (include specifications where special problems are involved).

    c. Measures to minimize effects on traffic and pedestrians.

14. Land Use and Urban Growth. The statement should include, to the extent relevant and predictable:

    a. The effect of the project on land use, development patterns, and urban growth.

    b. Where significant land use and development impacts are anticipated, identify public facilities needed to serve the new development and any problems or issues which would arise in connection with these facilities, and the comments of agencies that would provide these facilities.

15. (Deleted)

16. Projects under Section 14 of the Mass Transportation Act: Mass Transit Projects with a Significant Impact on the Quality of the Human Environment: The statement should include:

    a. Evidence of the opportunity that was afforded for the presentation of views by all parties with a significant economic, social or environmental interest.

    b. Evidence that fair consideration has been given to the preservation and enhancement of the environment and to the interests of the community in which the project is located.

    c. If there is an adverse environmental effect and there is no feasible and prudent alternative, description of all planning undertaken to minimize such adverse environmental effect and statement of actions taken or to be taken to implement the planning; or a specific statement that there is no adverse environmental effect.

1050.1D

Attachment 4
12/21/83

Council on Environmental Quality
Executive Office of the President

REGULATIONS

For Implementing The Procedural Provisions Of The

NATIONAL ENVIRONMENTAL POLICY ACT

Reprint
43 FR 55978–56007
November 29, 1978
40 CFR Parts 1500–1508

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PART 1500—PURPOSE, POLICY, AND MANDATE

1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970 as amended by Executive Order 11991, May 24, 1977).

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run con-

currently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500-1508 of this Title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to Sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.
1501.2 Apply NEPA early in the process.

Sec.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24 1977).

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review

(§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided,* That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.
1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory Requirements for Statements.
1502.4 Major Federal Actions Requiring the Preparation of Environmental Impact Statements.
1502.5 Timing.
1502.6 Interdisciplinary Preparation.
1502.7 Page Limits.
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1502.12 Summary.
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1502.17 List of Preparers.
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1502.19 Circulation of the Environmental Impact Statement.
1502.20 Tiering.
1502.21 Incorporation by Reference.
1502.22 Incomplete or Unavailable Information.
1502.23 Cost-Benefit Analysis.
1502.24 Methodology and Scientific Accuracy.
1502.25 Environmental Review and Consultation Requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact

statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report

On proposals (§ 1508.23)

For legislation and (§ 1508.17)

Other major Federal actions (§ 1508.18)

Significantly (§ 1508.27)

Affecting (§§ 1508.3, 1508.8)

The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately

after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in

the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of Contents.

(d) Purpose of and Need for Action.

(e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected Environment.

(g) Environmental Consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act).

(h) List of Preparers.

(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11-1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action

so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.8).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information

in the environmental impact statement.

(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.

1503.1 Inviting Comments.
1503.2 Duty to Comment.
1503.3 Specificity of Comments.
1503.4 Response to Comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdic-

tion by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do

not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.
1504.2 Criteria for Referral.
1504.3 Procedure for Referrals and Response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) below.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of

agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.
1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how

those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of

minimal expenditures not affecting the environment (*e.g.* long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of

information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this subparagraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor.* An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appro-

priate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute: *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C.

1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10 below.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy

reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under sec. 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reason of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency Capability to Comply.
1507.3 Agency Procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Sec. 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Sec. 102(2)(B) to

insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to Sec. 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of Sec. 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified por-

tions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.

1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical Exclusion.
1508.5 Cooperating Agency.
1508.6 Council.
1508.7 Cumulative Impact.
1508.8 Effects.
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1508.11 Environmental Impact Statement.
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1508.13 Finding of No Significant Impact.
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1508.18 Major Federal Action.
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1508.23 Proposal.
1508.24 Referring Agency.
1508.25 Scope.
1508.26 Special Expertise.
1508.27 Significantly.
1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental Assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human Environment.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction By Law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead Agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when

viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on

the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

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THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED*

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

PURPOSE

SEC. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

*Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970, as amended by Pub. L. 94–52, July 3, 1975, and Pub. L. 94–83, August 9, 1975.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

SEC. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(d) Any detailed statement required under subparagraph (c) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(g) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(i) Assist the Council on Environmental Quality established by title II of this Act.

SEC. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104. Nothing in section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

SEC. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to

the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203. The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

SEC. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 of this title;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) Consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

(2) Utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

SEC. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

SEC. 207. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

SEC. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the sup-

port of international exchange programs in the United States and in foreign countries.

SEC. 209. There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

THE ENVIRONMENTAL QUALITY IMPROVEMENT ACT OF 1970*

TITLE II—ENVIRONMENTAL QUALITY (OF THE WATER QUALITY IMPROVEMENT ACT OF 1974)

SHORT TITLE

SEC. 201. This title may be cited as the "Environmental Quality Improvement Act of 1970."

FINDINGS, DECLARATIONS, AND PURPOSES

SEC. 202. (a) The Congress finds—

(1) That man has caused changes in the environment;

(2) That many of these changes may affect the relationship between man and his environment; and

(3) That population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. This policy is evidenced by statutes heretofore enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) The primary responsibility for implementing this policy rests with State and local governments.

(3) The Federal Government encourages and supports implementation of this policy through appropriate regional organizations established under existing law.

(c) The purposes of this title are—

(1) To assure that each Federal department and agency conducting or supporting public works activities which affect the environment shall implement the policies established under existing law; and

(2) To authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality established by Public Law 91–190.

OFFICE OF ENVIRONMENTAL QUALITY

SEC. 203. (a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this title referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91–190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Bureau of the Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this title and Public Law 91–190, except that he may employ no more than 10 specialists and other experts without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter 111 of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or

*Pub. L. 91–224, 42 U.S.C. 4371–4374, April 3, 1970.

expert shall be paid at a rate in excess of the maximum rate for GS–18 of the General Schedule under section 5330 of title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) Providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91–190;

(2) Assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

(3) Reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) Promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encourage the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) Assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

(6) Assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government;

(7) Collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to sections 3618 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5) in carrying out his functions.

REPORT

SEC. 204. Each Environmental Quality Report required by Public Law 91–190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

AUTHORIZATION

SEC. 205. There are hereby authorized to be appropriated not to exceed $500,000 for the fiscal year ending June 30, 1970, not to exceed $750,000 for the fiscal year ending June 30, 1971, not to exceed $1,250,000 for the fiscal year ending June 30, 1972, and not to exceed $1,500,000 for the fiscal year ending June 30, 1973. These authorizations are in addition to those contained in Public Law 91–190.

Approved April 3, 1970.

THE CLEAN AIR ACT § 309*

§ 7609. Policy review

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

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*July 14, 1955, c. 360, § 309, as added Dec. 31, 1970, Pub. L. 91-604 § 12(a), 42 U.S.C. § 7609 (1970).

Executive Order 11514. March 5, 1970

PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

As amended by Executive Order 11991. (Secs. 2(g) and (3(h)). May 24, 1977*

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970), it is ordered as follows:

Section 1. *Policy.* The Federal Government shall provide leadership in protecting and enhancing the quality of the Nation's environment to sustain and enrich human life. Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals. The Council on Environmental Quality, through the Chairman, shall advise and assist the President in leading this national effort.

Sec. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969, hereafter referred to as the "Act", the heads of Federal agencies shall:

(a) Monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. Agencies shall develop programs and measures to protect and enhance environmental quality and shall assess progress in meeting the specific objectives of such activities. Heads of agencies shall consult with appropriate Federal, State and local agencies in carrying out their activities as they affect the quality of the environment.

(b) Develop procedures to ensure the fullest practicable provision of timely public information and understanding of Federal plans and programs with environmental impact in order to obtain the views of interested parties. These procedures shall include, whenever appropriate, provision for public hearings, and shall provide the public with relevant information, including information on alternative courses of action. Federal agencies shall also encourage State and local agencies to adopt similar procedures for informing the public concerning their activities affecting the quality of the environment.

(c) Insure that information regarding existing or potential environmental problems and control methods developed as part of research, development, demonstration, test, or evaluation activities is made available to Federal agencies, States, counties, municipalities, institutions, and other entities, as appropriate.

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*The Preamble to Executive Order 11991 is as follows:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purpose and policy of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 *et seq.*), and Section 309 of the Clean Air Act, as amended (42 U.S.C. 1857h-7), it is hereby ordered as follows:

(d) Review their agencies' statutory authority, administrative regulations, policies, and procedures, including those relating to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the purposes and provisions of the Act. A report on this review and the corrective actions taken or planned, including such measures to be proposed to the President as may be necessary to bring their authority and policies into conformance with the intent, purposes, and procedures of the Act, shall be provided to the Council on Environmental Quality not later than September 1, 1970.

(e) Engage in exchange of data and research results, and cooperate with agencies of other governments to foster the purposes of the Act.

(f) Proceed, in coordination with other agencies, with actions required by section 102 of the Act.

(g) In carrying out their responsibilites under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

Sec. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

(a) Evaluate existing and proposed policies and activities of the Federal Government directed to the control of pollution and the enhancement of the environment and to the accomplishment of other objectives which affect the quality of the environment. This shall include continuing review of procedures employed in the development and enforcement of Federal standards affecting environmental quality. Based upon such evaluations the Council shall, where appropriate, recommend to the President policies and programs to achieve more effective protection and enhancement of environmental quality and shall, where appropriate, seek resolution of significant environmental issues.

(b) Recommend to the President and to the agencies priorities among programs designed for the control of pollution and for enhancement of the environment.

(c) Determine the need for new policies and programs for dealing with environmental problems not being adequately addressed.

(d) Conduct, as it determines to be appropriate, public hearings or conferences on issues of environmental significance.

(e) Promote the development and use of indices and monitoring systems (1) to assess environmental conditions and trends, (2) to predict the environmental impact of proposed public and private actions, and (3) to determine the effectiveness of programs for protecting and enhancing environmental quality.

(f) Coordinate Federal programs related to environmental quality.

(g) Advise and assist the President and the agencies in achieving international cooperation for dealing with environmental problems, under the foreign policy guidance of the Secretary of State.

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended, and

Section 309 of the Clean Air Act, as amended, for the Council's recommendation as to their prompt resolution.

(i) Issue such other instructions to agencies, and request such reports and other information from them, as may be required to carry out the Council's responsibilities under the Act.

(j) Assist the President in preparing the annual Environmental Quality Report provided for in section 201 of the Act.

(k) Foster investigations, studies, surveys, research, and analyses relating to (i) ecological systems and environmental quality, (ii) the impact of new and changing technologies thereon, and (iii) means of preventing or reducing adverse effects from such technologies.

Sec. 4. *Amendments of E.O. 11472.* Executive Order No. 11472 of May 29, 1969, including the heading thereof, is hereby amended:

(1) By substituting for the term "the Environmental Quality Council", wherever it occurs, the following: "the Cabinet Committee on the Environment".

(2) By substituting for the term "the Council", wherever it occurs, the following: "the Cabinet Committee".

(3) By inserting in subsection (f) of section 101, after "Budget,", the following: "the Director of the Office of Science and Technology,".

(4) By substituting for subsection (g) of section 101 the following:

"(g) The Chairman of the Council on Environmental Quality (established by Public Law 91-190) shall assist the President in directing the affairs of the Cabinet Committee."

(5) by deleting subsection (c) of section 102.

(6) By substituting for "the Office of Science and Technology", in section 104, the following: "the Council on Environmental Quality (established by Public Law 91-190)".

(7) By substituting for "(hereinafter referred to as the 'Committee')", in section 201, the following: "(hereinafter referred to as the 'Citizens' Committee')".

(8) By substituting for the term "the Committee", wherever it occurs, the following: "the Citizens' Committee".

APPENDIX 1. AIRWAY FACILITIES (AF) ORGANIZATIONS

*

1. GENERAL. This appendix sets forth environmental procedures to be used by the Airway Facilities (AF) organization. All AF headquarters, regional, engineering center, implementation center and field level organizations shall comply with the requirements of this order.

2. ENVIRONMENTAL RESPONSIBILITIES.

Airways Facilities: Implementation Center and Regional Office. For Facilities and Equipment (F&E) programs and projects, the NAS Implementation Program (ANI) Implementation Center (IC) Manager shall be responsible for conducting an environmental assessment (EA) in accordance with this order and shall be responsible for the preparation and coordination of the document. Signature authority for categorical exclusions, EAs, environmental impact statements (EISs), and Finding of No Significant Impact (FONSIs) documentation is held by the IC Manager who shall ensure that this documentation is coordinated with the initialed by the Operations Branch (AXX-470) of the Regional Airway Facilities (AF) Division. The actual approval and certification may not be re-delegated. For AF projects outside the purview of the ANI organization, the AF division manager shall be solely responsible for conducting and signing the categorical exclusion, EA, EIS, and FONSI documentation. The IC Manager shall provide National Environmental Policy Act (NEPA) training to appropriate ANI personnel to ensure compliance with this order. The AF division manager shall provide NEPA training to appropriate regional personnel to ensure compliance with this order. *

3. ENVIRONMENTAL IMPACT STATEMENTS OR FONSI.

a. Environmental assessments should be developed along with economic and technical considerations in the facility siting and design. Careful consideration of the specific site and the effect of aircraft operations are necessary. Where the individual location or the operational use of the facility indicates significant environmental impact, an EIS should be prepared and circulated in accordance with this order.

b. Those projects which have been categorically excluded or a FONSI filed do not require further action unless a particular case significantly affects the quality of the human environment and requires the preparation of an EIS.

4. PROJECTS SUBJECT TO ENVIRONMENTAL ASSESSMENTS AND PROCEDURES. The following categories of projects are subject to an environmental assessment and preparation of an EIS or FONSI:

a. Establishment or relocation of facilities such as Air Route Traffic Control Centers (ARTCC), Airport Traffic Control Towers (ATCT), Air Route Surveillance Radars (ARSR), Beacon Only Sites, and Next Generation Radar (NEXRAD). These facilities may affect the environment because of land or access requirements; the electronic emissions generated by its operation; the impact on water and sewerage facilities, power distribution facilities, rainfall runoff and traffic flow from public roadways; and the impact on personnel in a given locale.

b. Establishment, relocation, or construction of facilities used for communications and navigation which are not on airport property. The environmental impact of these facilities normally results from providing access to the off-airport facility and construction of the facility.

c. Establishment or relocation of Instrument Landing or Microwave Landing Systems (ILS or MLS), and Approach Light Systems (ALS). These facilities may be the subject of environmental controversy because of the impact or a change in operational use and the location of certain elements off airports.

d. Establishment of FAA housing, sanitation systems, fuel storage and distribution systems, and power source and distribution systems normally should be assessed because of their location, and impact on community land use planning.

5. CATEGORICALLY EXCLUDED PROJECTS. The following projects require no further environmental consideration as they have been determined to be categorically excluded:

a. Upgrading of building electrical systems or maintenance of existing facilities (including painting, replacement of siding, etc.)

b. Minor expansion of facilities including the addition of communication channels where personnel is minimal and which require no additional land, and where expansion is due to remodeling of space in current quarters or existing buildings.

c. Upgrading of facilities to improve their operational capacity, e.g.,

(1) Existing runway approach lighting installations,

(2) Conversion of VOR to VOR with TACAN, (VORTAC), and

(3) Conversion of ILS or MLS to Category II or III standards.

d. Demolition and removal of buildings and structures, except where they are of historic, archaeological or architectural significance as officially designated by Federal, state or local government.

e. Replacement or reconstruction of a structure or facility with a new one of substantially the same size and purpose, where location will be on the same site as the existing building/facility.

f. Water, sewage, electrical, gas or other utility extension of temporary duration to serve construction.

g. New gardening or landscaping, or the maintenance of existing landscape.

h. Accessory onsite structures including storage buildings, garages, small parking areas, and signs and fences.

i. Grading on land with a slope of less than 10 percent, except where located near waterways, in any wetland, in an officially designated (by Federal, state, or local government agency) scenic area, or in officially mapped areas of severe geologic hazard.

j. Filling of earth into previously excavated land with material compatible with the natural features of the site.

k. Minor trenching and backfilling where the surface is restored and the excavated material is protected against wash and runoffs during the construction period.

l. Replacement of power and control cables for facilities, such as ALS, Airport Surveillance Radar (ASR), ILS, and RTR.

m. Repairs and resurfacing of existing access to remote facilities such as ARSR, RCAG, RML, and VOR with TACAN (VORTAC).

n. Installation of equipment within a facility or on an airport that provides for modernization or enhancement of the service provided by that facility, such as ASR, Radar Bright Display Equipment (RBDE) with Plan View Displays (PVD), Direct Access Radar Channel (DARC), beacon system on an existing radar and test sets.

o. Installation of an MLS on a runway that has ILS equipment.

p. Aviation weather, aviation weather systems such as Automated Weather Observing System (AWOS), Runway Visual Range (RVR), and Low Level Wind Shear Alert System (LLWAS).

q. Wind and other weather instruments located on airports.

r. Installation of equipment on airports, such as Hygrothermometers.

s. Establishment or relocation of Flight Service Station (FSS).

t. Establishment or relocation of Runway End Identifier Lights (REIL) and Omnidirectional Airport Lighting System (ODALS).

* u. Installation of Visual Approach Slope Indicators (VASI's) or Precision Approach Path Indicators (PAPI's) on airports. *

v. Installation or replacement of engine generators or powerplants from 5KW to 175W used in emergencies when commercial power fails.

w. Construction of Remote Communications Outlet (RCO) to provide air-to-ground communication between pilots of general aviation aircraft and personnel in Flight Service Stations.

x. Construction of Remote Transmitter/Receiver (RT/R) facilities to supplement existing communications channels installed in the ATCT or FSS.

6. TIMING OF ENVIRONMENTAL PROCEDURES.

a. The environmental impact of proposed projects should be considered during the budgetary process. It is not necessary that EIS's or FONSI's be filed prior to budgeting for a given project. However, where significant, environmentally adverse project impacts are known or anticipated, the project justification should identify all pertinent factors to enable a determination of whether to include the project in the budget or to consider alternatives.

b. Environmental assessments should be initiated with the beginning of design or engineering effort for the project.

c. No Procurement Request for construction will be submitted to the Procurement Office for action until the EIS or FONSI, if required, has been completed and filed.

d. If the project requires acquisition of property interests, no formal contact with the property owner for the purpose of acquiring these interests, including any offer, should be made prior to filing a EIS or FONSI, except for:

(1) Emergency situations;

(2) Obtaining rights-of-entry for such purposes as preparation for site testing, obtaining data, property surveys, etc; and

(3) Those cases where the review process indicates that the proposed site warrants further engineering study and requires an EIS. It assures the availability of the property pending the filing of the EIS. In this event, the DEIS should state that the FAA has entered into an option and the reason for the option; that alternate sites are being considered through the EIS process; and that a decision to exercise the option will not be made until completion of the review and filing of the EIS.

APPENDIX 2. SYSTEMS ENGINEERING SERVICE

1. GENERAL. This appendix sets forth environmental procedures to be used regarding research, engineering and development programs of FAA.

2. ENVIRONMENTAL RESPONSIBILITIES.

a. Establish environmental procedures and guidelines for National Airspace System programs, facilities, housing, and research/development activities.

b. Participate with other offices, services, and centers in the conduct of assessments and the preparation, processing, and evaluation of an EIS or FONSI for major actions involving;

(1) Development of systems with future cumulative, significant environmental impact;

(2) The inclusion into the National Airspace System of new equipment and techniques developed in RE&D programs.

c. Conduct periodic review of RE&D actions implementing this order;

d. Assure retention of documentation files by the organizational components having program or subprogram responsibility; and

e. Prepare and transmit to AEE a publicly available record which sets forth reasons for a determination that although an EIS may be required, its preparation is still premature and thus unnecessary. Such a record should be updated when significant new information becomes available.

3. ENVIRONMENTAL IMPACT STATEMENT OR FONSI. In determining whether RE&D programs and plans which have not been excluded require preparation of an assessment, EIS or FONSI, the following factors shall be considered:

a. The magnitude of Federal investment in the program;

b. The likelihood of widespread application of the technology;

c. The degree of environment impact which would occur if the technology were widely applied; and

d. The extent to which continued investment is likely to restrict future alternatives.

4. TIMING OF ENVIRONMENTAL PROCEDURES. An EIS or FONSI should be prepared late enough in the development cycle to contain meaningful information but early enough for analysis of environmental effects and alternative course of action to be significant inputs in the program decisionmaking process. An EIS or FONSI where required should be completed:

a. On or before completion of RE&D and before introduction into the National Airspace System.

b. Prior to, or with submission for comment to outside organizations of draft standards (RE&D products) or technical data packages per 9500.4; and

c. Prior to submission of draft Orders, Notices, Advisory Circulars to outside organizations for comment.

APPENDIX 3. AIR TRAFFIC

1. ENVIRONMENTAL RESPONSIBILITIES.

a. Regional Offices. Responsibility for environmental assessment and preparation of EIS's and FONSI's may be delegated to field facilities or retained within the regional office, with assistance from the field facilities. Regional offices and field facilities shall provide input to an * environmental assessment when requested by Air Traffic (AAT), Air Traffic Operations Service (ATO), Air Traffic Plans and Requirements Service (ATR) or other services. *

b. Headquarters. The office originating the proposed systemwide action is responsible for making environmental assessments and preparing the FONSI's and EIS's. Input may be requested from regional offices and field facilities for an action originating within headquarters.

2. ENVIRONMENTAL IMPACT STATEMENT OR FINDINGS OF NO SIGNIFICANT IMPACT. After completion of the environmental assessment (including noise analyses), the responsible official will determine whether the proposed procedure will require an EIS or FONSI or is categorically excluded.

3. ACTIONS SUBJECT TO ENVIRONMENTAL ASSESSMENTS AND PROCEDURES. The following actions are subject to environmental assessment and preparation of an EIS or FONSI.

a. New or revised air traffic control procedures which routinely route air traffic over noise sensitive areas at less than 3,000 feet ABOVE GROUND LEVEL.

b. Special use airspace if the floor of the proposed area is below 3,000 feet ABOVE GROUND LEVEL or if supersonic flight is anticipated at any altitude. This airspace shall not be designated, established, or modified until:

(1) The notice (NPRM or non-rule circular) contains a statement supplied by the requesting or using agency that they will serve as lead agency for purposes of compliance with NEPA; (e.g., restricted airspace for military use);

(2) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on the environmental aspects can be addressed (applicable only if an EIS is to be filed by the requesting agency);

(3) The notice contains the name and address, supplied by the requesting or using agency, of the office representing the agency to which comments on any land use problems can be addressed (applicable only if special use airspace extends to the surface); and

(4) The rule, determination, or other publication of the airspace action contains a statement, supplied by the requesting agency, that the requirements of NEPA have been met.

c. The provisions of paragraph b. (1) through (4) are not applicable to special use airspace actions if minor adjustments are made such as raising the altitudes or if a change is made in the designation of the controlling or using agency.

4. CATEGORICALLY EXCLUDED ACTIONS.

* a. Determination under FAR Part 77, "Objects Affecting Navigable Airspace" and determinations under FAR Part 157, "Notice of Construction, Alteration, Activation and Deactivation of Airports." Determinations under Part 157 include helipads and heliports. *

b. Procedural actions to the extent covered by a previously filed EIS or FONSI, when environmental circumstances have not changed.

c. Actions taken under FAR Part 71, "Designation of Federal Airways, Area Low Routes, Controlled Airspace and Reporting Points."

d. Actions taken under FAR Part 75, "Establishment of Jet Routes and Area High Routes"; FAR Part 99, "Security Control of Air Traffic"; FAR Part 101, "Moored Balloons, Kites, Unmanned Rockets and Unmanned Free Balloons"; and FAR Part 105, "Parachute Jumping."

* e. Establishment or modification of Terminal Control Areas (TCA), Terminal Radar Service Areas (TRSA), or Airport Radar Service Areas (ARSA). *

f. Procedural actions dictated by emergency determinations.

g. Procedural actions requested by users on a test basis to determine the effectiveness of new technology and measurement of possible impacts on the environment.

h. New procedures that routinely route aircraft over non-noise sensitive areas.

i. Establishment of helicopter tracks that channel helicopter activity over major thoroughfares.

APPENDIX 4. AVIATION STANDARDS

1. ENVIRONMENTAL RESPONSIBILITIES.

* a. As the responsible official under NEPA, the Aviation Standards Office Managers, Regional Division Managers, and/or staff shall implement the environmental assessment procedures, including developing an EIS or FONSI as appropriate. Normally, the district/field office responsible for the action is responsible for the environmental assessment. Regional Division Managers and staff will assist and monitor district/field offices activities in the accomplishment of environmental assessments. Regional Flight Standards and Aircraft Certification Divisions shall coordinate with and assist as necessary the airway facilities, air traffic, and airports division and others on those actions involving environmental impacts crossing division lines. The headquarters divisions, with assistance from the regions, will develop and coordinate FONSI actions for programs. *

b. Documentation, including the analysis of environmental factors, shall be retained in the project folder to substantiate the environmental assessment. This should be prepared for all projects not categorically excluded to support the decision that an EIS or FONSI will be prepared.

* c. In the Washington headquarters each EIS and FONSI pertaining to a regulatory project will be prepared for the signature of the appropriate Office Director and a concurrence signature from the Safety Regulations Division, APR-200. *

2. ENVIRONMENTAL IMPACT STATEMENT OR FINDINGS OF NO SIGNIFICANT IMPACT.

Environmental considerations of Aviation Standards actions require assessment of all relevant environmental factors. A decision as to whether the action's impact requires a FONSI or an EIS is based on the assessment.

3. ACTIONS SUBJECT TO ENVIRONMENTAL ASSESSMENT PROCEDURES.

The following Aviation Standards actions are subject to environmental procedures, analysis and a decision as to whether to prepare a FONSI or an EIS.

a. Aircraft Type Certificates. New, amended or supplemental aircraft types for which environmental regulations do not yet exist, or new, amended or supplemental engine types for which regulations do not yet exist, or where an environmental analysis has not yet been prepared in connection with regulatory action.

b. Aircraft/avionics maintenance bases to be operated by the FAA.

c. Regulations (and exemptions and waivers to regulations) which may affect the human environment.

d. Authorization to exceed Mach 1 Flight under FAR Part 91.55.

* e. Issuance of an air carrier operating certificate, an operating certificate, the approval of operations specifications or amendments thereto that may significantly change the character of the operational environment of an airport. The person responsible for issuing the certificate or approving the operations specifications is also responsible for assuring the assessment is prepared. Thorough coordination among Flight Standards District Office personnel, the Regional Flight Standards Division and the Regional Noise Abatement Officer is essential. Coordination among regions is expected if actions cross regional boundaries.

Normally, the Flight Standards District Office personnel will collect from the operator the information necessary to prepare a noise analysis for an assessment. The type of information needed includes; airports, types of aircraft and engines, number of scheduled operations per day, and the number of day/night operations. The information should also include the operator's long range plans and operation assumptions which are sufficiently conservative to encompass reasonably foreseeable changes in operations. If the carrier declines to furnish the information, or if the furnished information on operations at the airport does not address night operations, or if the information otherwise patently understates the potential operations (when compared with carrier's operations at other airports or with other carrier's operations at that airport), the responsible Federal official will develop an operational assumption which includes night operations and which is otherwise consistent with the typical operations of similar carriers at similar airports. This operational assumption will be used in the environmental assessment after coordination with the affected air carrier. If the air carrier objects to the use of this operational assumption in the assessment, the carrier may specify that a lesser level of operations be used in the assessment, provided that the carrier agrees that this lesser level will serve as a limit on the operations specifications. If the carrier refuses such a limitation, the FAA will include all reasonably foreseeable operations in the assessment. In this situation the assessment shall state the operational assumption was developed solely for the purpose of environmental analyses and that it is not to be viewed as a service commitment by the carrier.

If an EIS is required, the affected operator should be advised as soon as possible and should be requested for any additional required information. District Office personnel will coordinate, as necessary, any activity with the operator. The certificate will not be issued or the operations specifications approved until all issues and questions associated with the EIS are fully resolved and the Regional Director has concurred with the issuance or approval. No decision on the proposed action can be made until 90 days after EPA has published a notice in the Federal Register for a draft EIS or 30 days after publication of the notice for a final EIS.

Normally, the following situations will require the preparation of an environmental assessment.

* (1) Approval of operations specifications authorizing an operator to use turbojet airplanes for scheduled passenger service into an airport when that airport has not previously been serviced by any scheduled passenger turbojet airplanes.

(2) Approval of operations specifications authorizing an operator to use the Concorde for any scheduled/nonscheduled service into an airport, unless an environmental assessment for such service has been prepared previously.

Note: An assessment could be required, depending upon the situation, for issuance of an air carrier operating certificate or approval of operations specification when a commuter upgrades to turbojet equipment. *

f. New Instrument Approach Procedures, Departure Procedures, En Route Procedures, and Modifications to currently approved instrument procedures which are conducted below 3,000 feet ABOVE GROUND LEVEL (AGL) and which will tend to increase noise over noise sensitive areas. This requires consideration of those operations that will be routinely routed over noise sensitive areas and includes residential neighborhoods; education, health, and religious sites; and cultural, historic, and recreation areas. A significant increase in noise is based on reduction of distance between aircraft and noise sensitive areas of more than 20 percent.

4. CATEGORICALLY EXCLUDED ACTIONS.

a. Certificates for new, amended or supplemental aircraft types that meet environmental regulations or new, amended or supplemental engine types that meet emission regulations, or new, amended or supplemental engine types that have been excluded by the EPA; medical, airmen, export, manned free balloon type, glider type, propeller type, supplemental type not affecting noise, emission or waste; mechanic schools, agricultural aircraft operations, repair stations and other air agency ratings;

b. Special flight authorization controlled by operating limitations, FAR sections 21.193, 21.199, 91.29, 91.42, and 91.45.

c. All delegations of authority under section 314 of the FAA Act (49 U.S.C. 1301), e.g., designated examiners and engineering representatives.

d. Approvals of aircraft and engine repairs, parts, and alterations not affecting noise, emissions, or wastes.

e. Aircraft and engine certifications or approvals under regulations which have been covered by prior EIS's or FONSI's provided there have been no significant changes in circumstances.

f. Acoustic change actions that demonstrate compliance with FAR Part 36.

* g. Issuance of Airworthiness Directives (ADs). *

* h. Operating specifications and amendments thereto which do not significantly change the operating environment of the airport. These would include, but are not limited to, authorizing use of an alternate airport, administrative revisions to operations specifications, or use of an airport on a one-time basis. The use of an airport on a one-time basis means the operator will not have scheduled operations at the airport or will not use the aircraft for which it requests an amended operations specification on a scheduled basis. (See para. 3e(4) for the Concorde.) *

i. Regulatory documents which cover administrative or procedural requirements.

j. Regulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment).

k. Instrument Approach Procedures, Departure Procedures and En Route Procedures conducted at 3,000 feet or more ABOVE GROUND LEVEL (AGL); Instrument Procedures conducted below 3,000 AGL which do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved instrument procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas, and increases minimum altitudes and landing minima. Noise sensitive areas may include residential neighborhoods, educational, health, and religious sites, and cultural, historic and outdoor recreational areas. A significant increase in noise is based on a reduction of distance between aircraft and noise sensitive areas of more than 20 percent.

l. Denials of: (1) a petition for exemption; (2) a petition for reconsideration of a denial of exemption; (3) a petition for rulemaking; (4) a petition for reconsideration of a denial of a petition for rulemaking; (5) exemptions to Technical Standard Orders (TSOs) when they are routine in nature and have no significant environmental impact.

m. Ongoing actions which are categorically excluded or actions for which FONSI's have been prepared, normally, need only documentation in the project folder that the action is not subject to further environmental consideration. However, should it be determined that a particular action in the above category has a significant impact on the quality of the human environment, an EIS will be required.

5. TIMING OF ENVIRONMENTAL PROCEDURES. Environmental assessments shall be initiated along with technical, economic and operation considerations, and at the earliest practical point in time. The EIS or FONSI shall be filed prior to action; for example, in the case of certificates, prior to issuance.

APPENDIX 5. LOGISTICS

1. ENVIRONMENTAL RESPONSIBILITIES.

a. Logistics programs, while basically a service function in support of agency needs or actions initiated by other FAA elements, are subject to the procedures and guidance of this order. The Logistics Service shall ensure the filing of the EIS or FONSI prior to land acquisition and construction, per Appendix 5, paragraph 3. This section delineates the responsibilities of the Acquisition and Materiel Service (ALG) in processing proposed FAA actions and the categories of actions initiated in ALG which require an EIS or FONSI and those which are categorically excluded.

b. Through the negotiations and procurement processing of actions proposed by agency elements, ALG is responsible for:

(1) Converting commitments contained in an EIS or FONSI into contract clauses applicable to completed products, contractor's facilities, performance of services, and land acquisition documents.

(2) Negotiating the cost and application of environmental requirements in contracts.

(3) Assuring through inspection and review that the contractor meets environmental requirements in the contract, and administering any penalty provisions as provided in applicable contract clauses.

(4) Assuring that leases, loans, agreements, permits, easements, and any instrument negotiated with respect to donations, condemnations, purchases, or improvements involving real or personal property, and all utility or service contracts, conform with established environmental standards and incorporate pertinent terms relative thereto.

(5) Assuring that no solicitation for bids or proposals for construction, or contact with property owners for the purpose of initiating negotiations to acquire land shall be made prior to filing an EIS or FONSI, except as provided in Appendix 1, paragraph 6d.

2. ENVIRONMENTAL IMPACT STATEMENTS OR FONSIs. The environmental considerations of ALG actions shall be documented in an EIS or FONSI. An environmental assessment shall be developed along with design or specifications to determine whether the action requires an EIS or FONSI.

3. ACTIONS SUBJECT TO ENVIRONMENTAL ASSESSMENTS AND PROCEDURES. The acquisition of land for and the construction of new office buildings is subject to environmental procedures, assessment and a decision as to whether its impact requires an FONSI or EIS with Materiel Management Division, ALG-200 which is responsible for these environmental procedures.

4. CATEGORICALLY EXCLUDED ACTIONS.

a. Motor Fleet Management (purchase of new motor vehicles) where such vehicles are obtained from General Services Administration (GSA) under a lease arrangement or through a direct purchase as part of a national buy.

b. Use of space in buildings which are constructed for or controlled by GSA.

c. Leases of space in existing buildings.

d. Lease of space for a firm-term of 1 year or less.

e. Lease of land for a firm-term of 1 year or less.

f. Purchase of land or easements for existing operational facilities.

g. Purchase of three acres of less of land and associated easements and rights-of-way for new facilities.

APPENDIX 6. AIRPORTS

1. EXPLANATION. FAA Airports Program personnel, airport sponsors, and others involved in airport actions are directed to FAA Order 5050.4, Airport Environmental Handbook. FAA Order 5050.4 is a self-contained document which includes the policies and procedures of FAA Order 1050.1D, descriptions of the types of airport actions which require an environmental assessment and subsequent EIS or FONSI and those which are categorically excluded, and detailed information on the form and content of environmental documents. Compliance with FAA Order 5050.4 constitutes compliance with FAA Order 1050.1D for airport actions.

2.-104. RESERVED.

APPENDIX 7. ENVIRONMENT AND ENERGY

1. ENVIRONMENTAL RESPONSIBILITIES. The Office of Environment and Energy (AEE) is the focal point for all aviation-related environmental and energy programs within the agency. The Office of Environment and Energy is responsible for noise and aircraft emissions rulemaking and for establishing agency policies in these areas. Also, the Office of Environment and Energy provides environmental assessment guidance to all regions, offices, services and other subunits of the agency, other Federal agencies and State and local organizations. In addition, the Office of Environment and Energy is responsible for the organization mission of three divisions: Noise, Energy, and Air Quality.

a. Noise Division. Is the principal element of the office for the development of aviation-related environmental noise standards; for evolving and conducting operational noise monitoring; and for formulating long-range objectives and priorities for aircraft noise and sonic boom research and development programs.

b. Energy Division. Is the principal element of the office for the development of aviation-related energy conservation programs; for developing and formulating long-range objectives and priorities for research and development in aviation-related energy-efficient efforts.

c. Air Quality Division. Is the principal element of the office for the development of aviation-related programs to control atmospheric pollution; for the development and formulation of long-range objectives and priorities for research and development to maintain air quality; for the management of the low and high altitude pollution programs; and for the provision of a focal point for problems concerning the cabin environment, including radiation hazards.

2. ENVIRONMENTAL IMPACT STATEMENT OR FONSI. The environmental considerations of AEE actions shall be documented in an EIS or FONSI as appropriate.

3. ACTIONS SUBJECT TO ENVIRONMENTAL ASSESSMENTS AND PROCEDURES. The following AEE actions are subject to environmental analysis and a decision as to whether to prepare an EIS or FONSI.

a. Rules, regulations, Grant of Exemptions, orders, advisories, or directives which may result in significant impact on the human environment.

b. Statements of Policy, the execution of which could result in a significant impact on the human environment.

4. CATEGORICALLY EXCLUDED ACTIONS. The following are excluded actions for the reasons given:

a. All FAA actions to insure compliance with the EPA aircraft emissions standards are excluded. EPA has performed all required environmental analyses prior to the issuance of their aircraft emissions standards.

b. FAA grants service to small communities' exemptions for two-engine airplanes.