

October 21, 1976

[Docket No. 14932; Amdt. No. 100-4]

PART 152—AIRPORT AID PROGRAM
Processing Airport Development Actions
Affecting the Environment

The purpose of this amendment to Part 152 of the Federal Aviation Regulations is to revise references to applicable procedures for processing airport development actions affecting the environment, and to incorporate Department of Transportation Order 5610.1B and Federal Aviation Administration Order 5050.2B by reference.

Interested persons have been afforded an opportunity to participate in the making of this amendment by a notice of proposed rule making (Notice No. 75-32) published in the FEDERAL REGISTER on August 20, 1975 (40 FR 36516), and by a 30-day extension of the comment period in NPRM 75-32A, published in the FEDERAL REGISTER on September 30, 1975 (40 FR 44842). Due consideration has been given to all comments received in response to that notice.

The revised environmental procedures were set forth in an internal directive, FAA Order 5050.2A, Instructions for Processing Airport Development Actions Affecting the Environment (issued February 24, 1975). FAA Order 5050.2A represented a comprehensive revision of FAA's instructions for processing airport development actions. The notice proposed to amend Part 152 to implement the revised procedures and to make several minor changes to reflect the transfer of certain coordination responsibilities from the Department of Health, Education and Welfare (HEW) to the Environmental Protection Agency (EPA). FAA Order 5050.2A was published in its entirety as part of the notice. Based upon the comments received, both substantive and editorial changes have been made. Since a substantial number of pages were revised and reprinted, the order has been redesignated as FAA Order 5050.2B and is incorporated by reference along with DOT Order 5610.1B in § 152.23(a)(6) of Part 152.

The revised procedures are based on requirements of section 102 of the National Environmental Policy Act of 1969 (Pub. L. 91-190); the Airport and Airway Development Act of 1970 (as amended) (Pub. L. 91-258); section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f)); DOT Order 5610.1B, "Procedures for Considering Environmental Impacts" (39 FR 35234, September 30, 1974); and, Council on Environmental Quality (CEQ) Guidelines (40 CFR Part 1500; 38 FR 20550; August 1, 1973). To the extent that the above referenced statutes and orders are directive, the implementing procedures in FAA Order 5050.2B, are not readily amenable to change. However, all comments recommending changes or amendments were carefully considered and where such changes or amendments were permitted by existing law and appeared to be beneficial, changes have been made in Order 5050.2B.

Notice 75-32 identified the principal revisions in Order 5050.2A which were made to clarify environmental requirements and to provide guidance relating to environmental processes not covered in Order 5050.2. With respect to those items, and in response to comments received, a number of changes have been made in Order 5050.2B, as follows:

For clarity, the order refers to "changing a draft environmental impact statement to a negative declaration" instead of "terminating" that action, and the circumstances in which this action is appropriate have been more precisely stated.

The order previously listed a number of development actions which were excluded from the requirement for assessment. The order now identifies those development actions and environmental circumstances which require assessment and excludes all others.

Guidance on approval of airport layout plans (ALP) has been clarified by limiting the applicability to items of development approved by the FAA for the first time. This effectively eliminates retroactive application of the requirement. Additionally, the types of items subject to environmental approval in the ALP have been substantially reduced, and the procedures for conditional approval of the ALP have been simplified, including the elimination of the requirement for sponsor acceptance.

Guidance on land-use assurances has been clarified to recognize limitations on sponsor capabilities in this regard.

Guidance on content of impact statements and processing of statements has been further clarified particularly in the areas of Noise and Land Use, section 4(f) determinations (DOT Act), Historical and Archeological sites, Coastal Zone Management Programs, Endangered and Threatened Species, and Light Emissions.

In addition to the revisions identified in the notice and discussed above, extensive editing, consolidation, and reorganization has been accomplished for clarity, and a number of significant changes or additions have been made, as follows:

"Major new construction or expansion of passenger handling and parking facilities" has been defined and identified as a development item requiring environmental assessment. This addition was necessary to reflect 1976 amendments to the Airport and Airway Development Act.

More specific guidance relating to releases from land covenants has been added.

Requirements relating to findings for master planning grants have been deleted as redundant in view of the provisions in the order regarding airport layout plans and specific development projects resulting from master planning studies.

Guidance on the content of assessment reports for negative declaration actions has been further developed to include references to impact categories and guidance for the consideration and rejection of alternatives.

The checklist included as Appendix 2 (in Order 5050.2A) has been deleted as unnecessary in view of other editorial and organizational changes made.

Five flow charts have been added as Appendix 2 to illustrate the sequence of required actions and to identify the party responsible for taking the action.

This amendment incorporates DOT Order 5610.1B and FAA Order 5050.2B by reference in § 152.23 of Part 152. Copies of those documents may be obtained from any FAA Regional Office headquarters or any Airports District

Office. Copies are also available for inspection in the Rules Docket, Office of the Chief Counsel, FAA, Washington, D.C.

Since this amendment relates to public grants it may be made effective on less than 30 days notice.

This amendment is made under the authority of sections 11 through 27 of the Airport and Airway Development Act of 1970 (as amended) (Pub. L. 258; 84 Stat. 220-233), and section 1.47(g) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(g)).

In consideration of the foregoing, Part 152 of the Federal Aviation Regulations is amended, effective October 21, 1976, as follows:

1. By revising § 152.23(a)(6) to read as follows:

§ 152.23 Procedures: Preapplication for aid; accompanying information.

(a) * * *

(6) The sponsor's environmental impact assessment report prepared in conformance with Department of Transportation "Procedures for Considering Environmental Impacts" (DOT Order 5610.1B, 39 FR 35234; September 30, 1974), and Federal Aviation Administration "Instructions for Processing Airport Development Actions Affecting the Environment" (FAA Order 5050.2B 41 FR -----; October 21, 1976). DOT Order 5610.1B and FAA Order 5050.2B are incorporated into this Part and made a part hereof as provided in 5 U.S.C. 552(a) and pursuant to 1 CFR Part 51. Copies of those orders may be examined in the Rules Docket, Office of the Chief Counsel, FAA, Washington, D.C., and may be obtained on request at any FAA Regional Office headquarters or any Airports District Office.

2. By amending the first sentence in § 152.23(b) by inserting the word "report," between the words "statement," and "and."

§ 152.45 [Amended]

3. By amending § 152.45(b) by deleting the words "Secretary of Health, Education and Welfare" and inserting in place thereof the words "Administrator of the Environmental Protection Agency."

§ 152.73 [Amended]

4. By amending § 152.73(b) by deleting from the last sentence the word "analysis" and inserting in place thereof the words "impact assessment report."

5. By amending § 152.73(e) by deleting the words "Secretary of Health, Education, and Welfare" and by inserting the words "Administrator of the Environmental Protection Agency."

Incorporation by reference provisions approved by the Director of the Federal Register, September 27, 1976.

Issued in Washington, D.C., on October 12, 1976.

JOHN L. McLUCAS,
 Administrator.

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* Found in the Notice section of this issue of the FEDERAL REGISTER.

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