

CHANGE REQUEST COVER SHEET

Change Request Number: 13-27

Date Received: 12/20/2012

Title: National Environmental Policy Act (NEPA) Update

Name: Mike Mudzo

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Policy OR Guidance: Policy

Section/Text Location Affected: AMS Policy Section: 4.2.3.3.2.8 Environmental / Sustainability / Energy Considerations and 4.8 Environmental, Occupational Safety and Health, and Energy Considerations

Summary of Change: This change emphasizes that the FAA must comply with applicable requirements of the National Environmental Policy Act (NEPA) in accordance with the current version of FAA Order 1050.1, Environmental Impacts: Policies and Procedures.

Reason for Change: The change identifies the Act and the Order in the proper places in the policy sections. It also deemphasizes the revision letter of the Order and alerts the practitioner to follow the guidance of the current version.

Development, Review, and/or Concurrence: AEE-400, AAP-130

Target Audience: FAA Lines of Business and Service Organizations.

Potential Links within FAST for the Change: N/A

Briefing Planned: No

ASAG Responsibilities: Review and Comment

Potential Links within FAST for the Change: N/A

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Acquisition Management Policy:

Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

[\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

Acquisition Management Policy:

Section 4.8 : Environmental, Occupational Safety and Health, and Energy

Considerations [\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

Old Content: Acquisition Management Policy:

Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

The FAA supports, to the extent financially feasible and allowable by its mission, all environmental, energy savings and sustainability laws, regulations, and orders applicable to environmental/energy/sustainable areas. The RECO must follow the directives as outlined below and in the corresponding provisions in the Real Estate Guidance. For further information, please review the real estate guidance for land and space.

A. Environmental Directives.

1. Environmental Due Diligence Audits (EDDA): FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. The EDDA process must be completed prior to executing contracts for the acquisition or disposal of real property, including the conveyance, sale or transfer of any FAA buildings and structures.
2. National Environmental Policy Act (NEPA): Before acquiring (by lease, purchase, or otherwise) any additional land (new sites or to expand existing sites), the FAA must comply with all applicable requirements of the National Environmental Policy Act (NEPA) in accordance with FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts for property acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met prior to proceeding with the land acquisition. The written notification must be placed in the real estate file.

B. Energy Directives.

1. Energy Star requirement of the Energy Independence and Security Act of 2007 (EISA) for Lease Acquisition: Section 435 prohibits Federal agencies from leasing buildings that have not earned an Energy Star label after December 19, 2010 unless the space requirement comes within the specific exemptions provided in the EISA statute. For the

list of exemptions see the land guidance.

In order to ensure compliance and consistency with EISA Section 435, when a RECO leases space greater than or equal to 10,000 gross square feet, the building must have earned an Energy Star label in the most recent year, or the ownership must commit to earn the Energy Star label within one year following the lease execution. The RECO can determine that the acquisition shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the rental market. If the cost of a conforming building is not financially feasible, the RECO shall maintain documentation to support their determination in the real estate file.

2. Utilities: When acquiring Utility contracts, the RECO shall determine the availability of: 1) "green" power credits, 2) sustainable sources and/or 3) renewable energy. The RECO should acquire any one of the previously mentioned credits if the rate for the sustainable utility is no more than 10% above the standard rate of a power utility in the same locality. If the cost of energy from a conforming source is not feasible, the RECO shall maintain documentation to support that determination in the real estate file. The RECO may exceed 10% of the standard rate if the requesting LOB desires to acquire the sustainable source, agrees to the costs thereof, and provides certification of the funding availability. In that case, the RECO shall maintain the signed decision of the requesting LOB in the contract file. It should be noted that an increase in rent for an energy efficient building may generate energy savings by decreasing utility costs.

C. Sustainability Requirements.

Executive Order (EO) 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, dated January 24, 2007, and EO 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, dated October 5, 2009, require federal agencies to comply with the *Guiding Principles for High Performance and Sustainable Buildings* (Guiding Principles). The Guiding Principles establish building standards for: integrated design, energy performance, water conservation, indoor environmental quality, and building materials. The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, including building construction and major renovation standards, as well as operation and maintenance standards. In order to comply with the EOs, the RECO must lease space in a building that meets all the Guiding Principles, and the Lessor must provide some form of relevant certification to that effect (e.g., Certification of a building at LEED Silver or better).

Set forth below is the list of all relevant DOT/FAA policies/orders pertaining to sustainability:

- The DOT and FAA Administrator's Policy Statements on Sustainability
- The DOT and FAA Sustainability Strategic Performance Plans
- The DOT and FAA High Performance Sustainable Buildings Implementation Plans

D. ISO 14001 Environmental Management System (EMS).

In accordance with EO 13423, and EO 13514, FAA shall implement environmental management systems (EMS) at all appropriate organizational levels, to (i) ensure use of EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, including environmental aspects of energy and transportation functions, (ii) establish agency objectives and targets to implement legal and other requirements, and (iii) monitor, analyze, and report on performance targets. In short, EMS is FAA's centralized location to set targets and measure progress in meeting environmental goals. As such, EMS helps FAA manage its environmental risks through commitments to compliance, prevention of pollution, and continual improvement.

RECOs must follow the Logistics Service Area (LSA) Environmental Management Programs (EMPs). EMPs summarize ARC EMS elements for each identified significant environmental aspect, including: objectives, targets, performance indicators, legal and other requirements, roles and responsibilities, training, reporting and documentation requirements. Current LSA EMPs with significant environmental aspects are shown in Table 1.

Table 1: LSA EMPs and Their Significant Environmental Aspects

| ARC EMS - LSA EMP | Significant Environmental Aspects |
|---|---|
| Environmental Due Diligence Audit | Environmental risks associated with real property transactions |
| Facility - Energy and Water | <ol style="list-style-type: none">1. Energy consumption2. Water consumption3. Wastewater generation |
| Material Conservation & Waste Reduction | <ol style="list-style-type: none">1. Material use/consumption2. Solid and hazardous waste generation |

The ARC EMS requires the RECO to follow and use the appropriate environmental clauses for land and space acquisition to implement operating procedures, comply with environmental requirements, and maintain documentation as applicable.

The ARC EMS also requires annual internal EMS audits and management reviews to ensure that the identified significant environmental aspects are managed in accordance with applicable procedures. The cyclical process enables management to make informed decisions regarding adapting to changing circumstances, actual performance compared with the original performance targets, and with respect to the continual improvement of the EMS.

Relevant EMS FAA policies/orders include the following:

- EMS Order 1050.21, Environmental Management System
- FAA Environmental Policy
- Knowledge Services Network (KSN)

New Content: Acquisition Management Policy:
Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

The FAA supports, to the extent financially feasible and allowable by its mission, all environmental, energy savings and sustainability laws, regulations, and orders applicable to environmental/energy/sustainable areas. The RECO must follow the directives as outlined below and in the corresponding provisions in the Real Estate Guidance. For further information, please review the real estate guidance for land and space.

A. Environmental Directives.

1. **Environmental Due Diligence Audits (EDDA):** FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. The EDDA process must be completed prior to executing contracts for the acquisition or disposal of real property, including the conveyance, sale or transfer of any FAA buildings and structures.
2. **National Environmental Policy Act (NEPA):** Before acquiring (by lease, purchase, or otherwise) any additional land (new sites or to expand existing sites), the FAA must comply with all applicable requirements of the National Environmental Policy Act (NEPA) in accordance with the latest version of FAA Order 1050.1, *Environmental Impacts: Policy and Procedures*. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met prior to proceeding with the land acquisition. The written notification must be placed in the real estate file.

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In order to ensure compliance and consistency with EISA Section 435, when a RECO leases space greater than or equal to 10,000 gross square feet, the building must have earned an Energy Star label in the most recent year, or the ownership must commit to earn the Energy Star label within one year following the lease execution. The RECO can determine that the acquisition shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the rental market. If the cost of a conforming building is not financially feasible, the RECO shall maintain documentation to support their determination in the real estate file.
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Section 4.8 : Environmental, Occupational Safety and Health, and Energy Considerations

Old Content: Acquisition Management Policy:

Section 4.8 : Environmental, Occupational Safety and Health, and Energy Considerations

FAA investment programs shall comply with relevant federal, state, and local regulations, and FAA orders, specifications, and standards pertaining to environmental and occupational safety and health (EOSH) requirements, and energy and water requirements. Service organizations responsible for implementing investment programs must consider EOSH and energy and water requirements, and address them throughout the lifecycle management process in order to:

- Ensure the installation and operation of systems, equipment, facilities, and related program activities will not adversely impact personnel safety and health or the environment; and
- Ensure the acquisition program baseline of the investment initiative reflects the schedule and cost of EOSH requirements.

Questions on the applicability of state and local EOSH requirements to federal acquisitions should be referred to the Office of the Chief Counsel for an evaluation of the supremacy clause and sovereign immunity implications.

New Content: Acquisition Management Policy:

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