

CHAPTER 9

NEPA and Airspace

I. Background

The National Environmental Policy Act (NEPA) is the nation's charter for the protection of the environment. It requires all federal agencies to analyze the potential impacts of all proposed actions on the human and natural environments. Public involvement is required in the planning process and concerns raised by the public must be addressed prior to federal agencies reaching a decision on any proposed action.

Broad guidelines for implementing NEPA have been established by the President's Council on Environmental Quality (CEQ). The DoD and each land management agency have developed additional detailed internal guidelines and policies for complying with the requirements of NEPA. Agency personnel must refer to these guidelines for further instructions. In addition, the FAA has established processes for ensuring that proposals affecting aviation adequately consider all the aeronautical concerns of the users of the nation's airspace.

II. Airspace Proposals

Airspace related proposals would be generated by one of two sources. Should the proposal originate with one of the military branches, DoD will function as the lead agency and the FAA will act as the cooperating agency. In this role the FAA will represent the collective interests of the civilian sector, which may include other federal agencies. Should an airspace proposal originate in the civilian sector and potentially impact the military then the roles are reversed with the FAA serving as lead agency and DoD acting as the cooperating agency. The lead agency is responsible for developing the preliminary airspace proposal and for managing the NEPA compliance process including assuring appropriate notice to the public, user groups and other agencies. The military representative (MILREP) located at FAA headquarters serves as the key facilitator between the military, the FAA and affected land management agencies.

III. NEPA Planning Requirements

There are four broad levels of planning action required to comply with NEPA requirements. Most actions will require compliance with only one level although it is not unusual for issues to be identified in one level that escalates the process to another level.

A. Emergency Procedures

Emergencies requiring immediate response may be managed without meeting NEPA requirements initially. Agencies are limited to the minimum actions needed to reasonably mitigate the emergency and once the immediate emergency is controlled, more detailed planning requirements of NEPA must be met. With the exception of a Temporary Flight Restriction, airspace related actions would normally not fall within the emergency category. The nature of the emergency and the basis for the decision to bypass the NEPA process must be documented in writing and made part of the respective agency files.

B. Categorical Exclusion

Some levels may be categorically excluded (CATEX) from additional NEPA consideration. These actions are specifically identified in each agency's regulations and generally consist of routine and repetitive federal actions that do not normally represent a significant impact upon the human or natural environment. A finding of categorical exclusion must be documented in writing, specifically noting which exclusion has been applied. Airspace management actions proposed by land management agencies generally do not fall within a categorical exclusion. Department of Defense categorical exclusions are somewhat different from those available to the land management agencies, and airspace proposals generated by DoD are more likely to have been granted a categorical exclusion.

C. Environment Assessment

Environmental Assessment (EA), applies to those actions which are not subject to the categorical exclusion but which are not initially thought to be of sufficient magnitude as to constitute a "significant federal action." These actions are evaluated in a process that identifies the areas of the environment that are likely to be impacted by the proposed federal action, the probable consequences of the impacts, and proposed mitigating actions. Environmental Assessments require review by other agencies as well as the

public, and can take several months to prepare. In some cases NEPA compliance prepared for another action, such as a resource management plan, may be applicable to a newly proposed action and can be utilized to keep the review at the EA level rather than requiring the more detailed Environmental Impact Statement (EIS) process. It may be appropriate to evaluate relatively minor proposed airspace actions through the EA process.

Every EA must lead to a finding of no significant impact (FONSI), a decision to prepare an environmental impact statement (EIS), or a decision not to move forward on the proposal.

D. Environmental Impact Statement

The fourth and most detailed level of review is the Environmental Impact Statement. This is required for any proposed action deemed to have significant issues or be a major federal action. An EIS involves detailed assessment of the environmental impacts and extensive public involvement. This is a lengthy and expensive process; agency personnel should seek internal agency guidance before initiating the process. Most proposals to establish a long-term airspace use will require an EIS.

IV. Role of the Land Management Agency

Regardless of whether the proposed action is generated by the military, or on behalf of civilians, agency personnel must become immediately involved. Long before the more formal stages of the NEPA process begins, scoping is initiated by the lead agency in which the proposed action is defined, likely impacts are listed and potentially affected entities are identified. It is critical that issues affecting land management agencies be identified and discussed at the scoping stage. In some cases the concerns can be mitigated at this time, or the proposal can be altered to resolve a potential problem. Even if there is no resolution, raising issues at this early stage allows for a more reasoned discussion during the formal process. In order for this involvement to occur agency personnel must be active in local and regional airspace organizations and must have established relations with military and FAA counterparts.

Land management agencies are responsible for providing detailed information as to which resources may be impacted and what the impacts are projected to be. The identified impacts must be supported by established natural or social science information.

V. FAA Circularization Process

The FAA Circularization Process is used by the FAA to specifically identify aviation concerns regarding a proposed action, and is initiated after the NEPA process is completed. Circular notices provide a detailed description of the proposal including charts that will help interested persons or organizations in preparing comments. The FAA sends the circular to individuals/organizations on its circularization lists which include all known interested persons and groups such as MILREPs, national and local offices of aviation organizations, local flight schools, local airport owners, aviation managers, fixed base operators, local air taxi and charter flight offices, and other government agencies.

This process is designed to deal solely with the aeronautical aspects of the proposed action. Resource related concerns must be addressed in the NEPA process rather than in the circularization process. Comments relating to non-aeronautical issues will not be considered during the FAA Circularization Process.

It is impossible to identify all potential issues that agency administrators must address in reviewing airspace proposals; however, items such as the following should be considered:

- A. What lays under the airspace:
 - 1. Helibases, helispots, airstrips or other aviation facilities?
 - 2. Proposed or designated wilderness?
- B. Do agency aircraft currently operate in the affected airspace?
- C. Does the proposal involve hazardous materials (HAZMAT)?
- D. Will additional ground facilities be required to support the proposed action?
- E. What are the noise and visual impacts of the proposal?
- F. Are the proposal impacts diurnal or seasonal in nature?
- G. Will the proposal:
 - 1. Impact the agency's ability to conduct missions such as law enforcement, wildland fire management, search & rescue, recon, detection or wildlife management?
 - 2. Affect existing interagency agreements or require new agreements?
 - 3. Alter existing aviation impacts upon natural or cultural resources?

4. Impact existing or proposed recreational activities?
5. Impact existing communication systems?
6. Increase or decrease the traffic over the agency's lands?
7. Change the type or mixture of aircraft presently operating in the airspace?

VI. Agency Involvement

Agency personnel are encouraged to establish working relations with their counterparts in other civilian and military agencies. Open lines of communication will assure timely notification of proposals and assure appropriate agencies are involved. The FAA maintains a mailing list for sending written notice of airspace proposals. The military and other civilian organizations maintain similar mailing lists.

Agency personnel should also participate in the Regional Airspace and Range Council Meetings (see Chapter 2, section V). Other sources of information on proposals include legal notices in area newspapers, newsletters from aviation organizations such as the Aircraft Owners and Pilots Association (www.aopa.org) or land management support organizations such as the National Parks and Conservation Association (NPCA). Additional sources of information in recent years relate to the growing number of aviation sites on the Internet such as the Aviation Magazine and News Service known as AVWeb (www.avweb.com).