

Chapter 9

NEPA and Airspace

I. Background

The National Environmental Policy Act (NEPA) is our 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 considered prior to the federal agency reaching a decision on the proposed action. Broad guidelines for implementing NEPA have been established in regulation by the President's Council on Environmental Quality (CEQ). 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.

II. 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 which escalates the process to another level.

First, bonafide emergencies requiring immediate response may be managed without meeting NEPA requirements. However, federal agencies are limited to the minimum actions needed to reasonably mitigate the emergency and once the immediate emergency is controlled then more detailed planning requirements of NEPA must be complied with for any further federal actions. With the exception of a temporary flight restriction, airspace related actions would usually 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.

The second level is those actions which are categorically excluded from additional NEPA consideration. These actions are specifically identified in the regulations and generally consist of routine and repetitive federal actions which have been determined to 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. DoD categorical exclusions are somewhat different from those available to the land management agencies and airspace proposals generated by DoD are more likely to have a categorical exclusion applied.

The third level, the environmental assessment (EA), applies to those actions which are not subject to the categorical exclusion but which are not of sufficient magnitude as to constitute a “significant federal action”. These actions are evaluated in an abbreviated process which identifies the areas of the environment which 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 public involvement and can take up to several months to prepare. In some cases NEPA compliance prepared for another action, such as a resource management plan, may be applicable to the proposed action and can be utilized to keep the review at the EA level rather than requiring the more detailed EIS process. It may be appropriate to evaluate relatively minor proposed airspace actions through the EA process.

The fourth, and most detailed level of review is the Environmental Impact Statement (EIS). This is required for any proposed action deemed to be a significant or major federal action and involves detailed assessment of the environmental impacts and extensive public involvement. This is a lengthy and expensive process and managers should seek internal agency guidance before initiating the process. Most airspace related proposals will require an EIS.

III. Airspace Proposals

Airspace related proposals will 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, including that 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, representing all affected branches. 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 in this process.

IV. Role of the Land Management Agency

Regardless of whether the proposed action is generated by the military, or by a civilian agency, agency administrators must be involved early on. Long before the more formal stages of the NEPA process begin a scoping process 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 important to the land management agency be identified and discussed at this stage. In some cases the concerns can be mitigated at this time, or the proposal altered resolving the 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 administrators 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 aviation 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.

A critical point to remember is that this process is designed to deal solely with the aeronautical aspects of the proposed action. It is important to remember that 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 which agency administrators must address in reviewing airspace proposals however items such as the following should be considered:

- # are existing helibases, helispots, airstrips, or other aviation facilities under the airspace in the proposal?
- # do agency aircraft currently operate in the affected airspace?
- # does the proposal involve HAZMAT?
- # will additional ground facilities be required to support the proposed action?
- # will the proposal impact the agency's ability to conduct required missions such as law enforcement, wildland fire management, search & rescue, or wildlife management?
- # will the proposal affect existing interagency agreements?
- # will the proposal require new interagency agreements?
- # what are the noise and visual impacts of the proposal?
- # will the proposal alter existing aviation impacts upon natural or cultural resources?
- # will the proposal impact existing or proposed recreational activities?
- # will the proposed action impact existing communication systems?
- # will the proposal increase or decrease the traffic over the agency's lands?
- # are the proposal impacts diurnal or seasonal in nature?
- # will the proposal change the type and/or mixture of aircraft presently operating in the airspace?
- # is the area under the airspace proposal proposed or designated wilderness?

VI. How to Get Involved

Agency personnel must be proactive in establishing working relations with their counterparts in other civilian and military agencies. Open lines of communication will assure that agency personnel are aware of proposals early on and that appropriate agency involvement occurs. It is particularly important that agencies get on FAA mailing lists in order to assure receiving written notice of proposals. The military and other civilian agencies maintain similar mailing lists.

Agency personnel should also participate in the Airspace and Range Council Meetings (see Chapter 2). Other sources of information on proposals include legal notices in area newspapers and newsletters from aviation organizations such as the Aircraft Owners and Pilots Association (AOPA) or land management support organizations such as the National Parks and Conservation Association (NPCA). An additional source in recent years is the growing number of aviation related sites on the internet such as AVWEB (www.avweb.com).