

Order 5050.4B...

What's new?

Presented to: ANM Annual Conference

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Federal Aviation
Administration



1050.1E exists...why have 5050.4B?

- 1050 changed substantially.
- Airports disturb large areas of land.
- “4B” retains much of “4A’s” valuable information addressing **airport specific** NEPA requirements and administrative issues.



Why was change needed?

-5050.4A was published in 1985, **22** years ago.

Reagan's 1st term.

“Gorbie” last President USSR

Big movie: *The Color Purple*.

Biggest song: *We are the World*.

Nintendo introduced.

Postage stamp: 22 cents.

Gallon gas: \$1.24

Car price (avg.): \$6,500



Thought behind “4B.”

Make 5050.4B consistent with 1050.1E.

Clean up some confusing instructions.

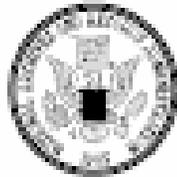
Address numerous questions we’ve received over past 20 year.

Provide a format that’s easier to update.

Provide instruction in **“plain English.”**



Detailed explanations.



Federal Register

Thursday,
May 18, 2006

Part III

Department of Transportation

Federal Aviation Administration

National Environmental Policy Act (NEPA)
Implementing Instructions for Airport
Actions, Notice



WEB ACCESS.



Preamble:

http://www.faa.gov/airports_airtraffic/airports/resource/publications/orders/environmental_5050_4/media/preamble.pdf.

Order:

http://www.faa.gov/airports_airtraffic/airports/resource/publications/orders/environmental_5050_4.



Substantial Change 1.

Removed **special purpose laws** (those outside NEPA) from Order 5050.

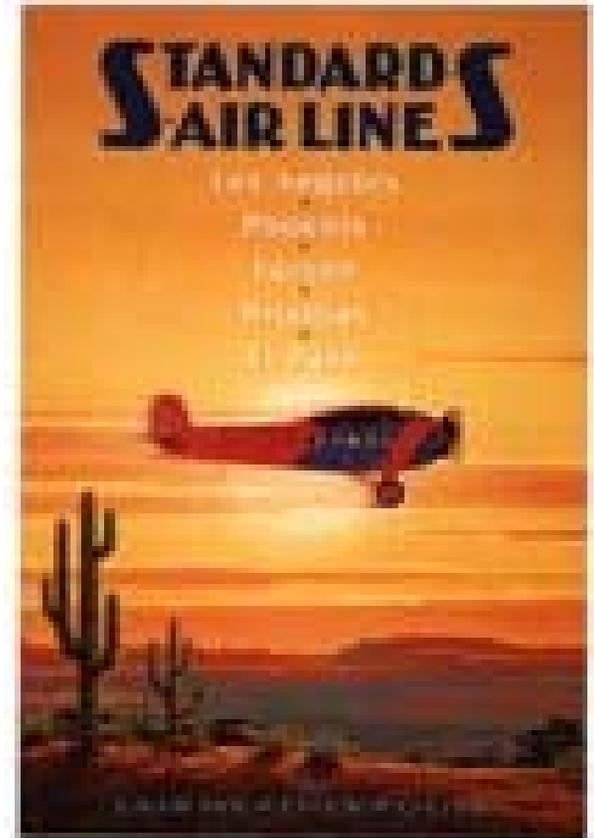
Place that information in a Desk Reference.

Some like it...some don't.



STANDARD DESK REFERENCE CHAPTER.

1. INTRODUCTION. (EXAMPLE)
2. APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS. (EXAMPLE)
3. APPLICABILITY TO AIRPORT PROJECTS.
4. PERMITS, CERTIFICATIONS, AND APPROVALS.
5. PROCEDURES FOR COMPLIANCE WITH STATUTORY, REGULATORY, AND OTHER REQUIREMENTS – ENVIRONMENTAL ANALYSIS.
6. DETERMINING IMPACTS
7. DETERMINING SIGNIFICANT IMPACTS.
8. ENVIRONMENTAL IMPACT STATEMENT CONTENT



CHAPTER 2. BIOTIC RESOURCES

1. INTRODUCTION.

a. Biotic Resources. For purposes of this desk reference, the term “biotic resources” includes various types of flora (i.e., plants) and fauna (i.e., fish, birds, reptiles, amphibians). The term also includes coral reefs, rivers, lakes, wetlands, forests, upland communities, and other habitat types supporting flora and fauna.



2. APPLICABLE STATUTES AND REGULATIONS.



APPLICABLE STATUTES AND IMPLEMENTING REGULATIONS	SUMMARY DESCRIPTION	OVERSITE AGENCY
16 USC 662(a)	When a Federally approved or financed action would affect a stream or water body, the responsible Federal agency must consult with the USFWS.	USFWS
Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federally Landscaped Grounds, 60 <i>Federal Register</i> (FR) 40,837 (1995) or 60 FR 40837 (1995)	Provides guidance for interpreting and applying the Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds.	U.S. Environmental Protection Agency (EPA) (Office of the Federal Environmental Executive)
<i>Invasive Species</i> , Exec. Order No. 13112, 64 FR. 6183 (1999) or E.O. 13112, 64 FR 6183 (1999)	Paragraph 3f of attachment 2; U.S. Department of Transportation (DOT) Order 5610.1C	Departments of the Interior (DOI), Commerce, Agriculture (USDA), and Transportation (DOT)
49 USC 47106(c)(C)	When review of an application for an airport development project involving a new airport, a new runway, or a major runway extension indicates the project would have significant adverse effects on natural resources including fish and wildlife (among other environmental resources), the Secretary of Transportation may approve that application, but only after finding that no possible and prudent alternative exists and that every reasonable step has been taken to minimize the adverse effects.	FAA

Substantial Change 2.

Expanded the list of airport related Federal actions that have occurred since 1985.

Examples.

ALP approval types, including mixed approval.

Passenger Facility Charges approvals.

Surplus property for airports.

April 2006

ORDER 5050.4

(2) Conditional, unconditional, or mixed approval a location for a new, public use airport.

(3) Conditional, unconditional, or mixed approval of a first-time or changed airport layout plan (ALP).

(4) Authorizing an airport sponsor to impose and use Passenger Facility Charges (PFC).

(5) Conditional, unconditional, or mixed approval of an airport sponsor's request under 49 USC, section 47125, to use or transfer Federally-owned land to carry out an action under 49 USC Chapter 471, Subchapter I, at a public-use airport or to support the airport's operations.

(6) Conditional, unconditional, or mixed approval an airport sponsor's request to release airport land from a Federally-obligated, public-use airport when the land would be used for non-aeronautical purposes.

(7) Conditional, unconditional, or mixed approval of the use of a facility as public-use airport when the facility becomes available under the Surplus Property Act.

(8) Approving noise compatibility programs under 14 CFR, Part 150.

(9) Approving an airport sponsor to restrict the use of Stage 3 aircraft at public-use airports under 14 CFR Part 161.

(10) Issuing a Part 139 certification, and

(11) Conditional, unconditional, or mixed approval of funding for measures in an FAA-approved Wildlife Hazard Management Plan or approving ALP changes to accommodate those measures.

Substantial Change 3.

- Include **non-jurisdictional** wetlands in our analyses. Not new, emphasized.

We received many questions on this during past 15 years.

NEPA, FWCA, Executive Order 11990 (Wetlands) address this resource.

Being a “jurisdictional” wetland does **not** mean a wetland has higher ecological values and functions.



Substantial Change 4.

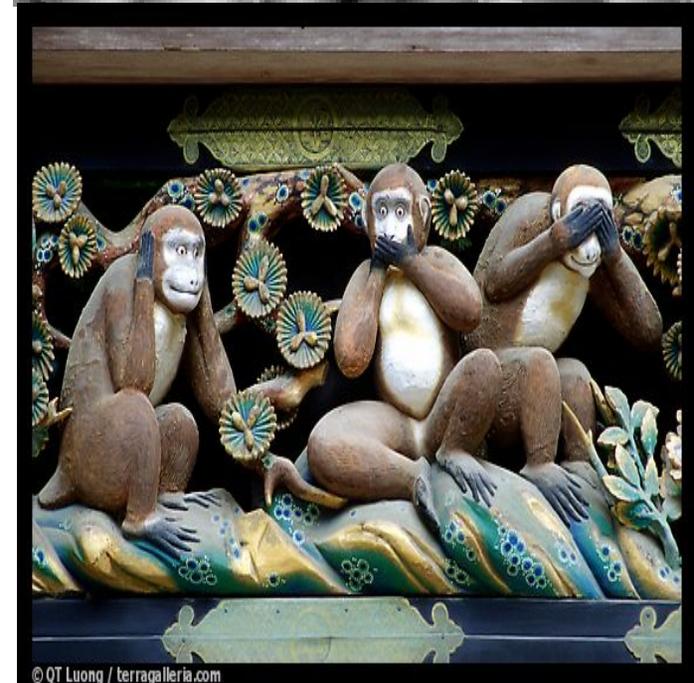
Klamath Decision. “Supremes” (Court Justices) issued in 2001 (see 532 US 121 St.; 2001).

If FAA shares with **sponsor**...public gets access to that information too:

- * Pre-decisional or deliberative material;
- * Draft technical reports;
- * Other documents.

Could have a **chilling effect** on deliberations due to release under Freedom of Information Act (**FOIA**).

CONTACT FAA’S REGIONAL COUNSEL FOR GUIDANCE!!



Substantial Change 5.

NOI trigger... a “**proposal exists.**”

-

When FAA has enough planning information to **meaningfully** evaluate environmental effects.

- 40 CFR 1508.23.

Lack of **well-conceived** data and information causes substantial **hurdles** and **delays** in the NEPA process.

-Paragraph 904.b(1)



Substantial Change 6.

FROM ORDER 5050.4B:

202.c.(4) Limitations on ALP approvals. The approving FAA official may **not conditionally** approve an ALP depicting a new airport, a new runway, or a major runway extension if any of those projects and their associated actions are the subjects of an EA or EIS that is **being prepared**. In these instances, the approving FAA official may **unconditionally approve** an ALP depicting those facilities and their connected actions, **but only** if FAA has issued a FONSI or ROD that is based on an EA or EIS that addresses those airport actions. These limitations **do not preclude** ARP from taking any of the following actions:

(a) Approving ALPs depicting and approving Airport Improvement Program (AIP) or Passenger Facility Charge (PFC) funding for **projects having independent utility** from those the ongoing NEPA document is addressing. For purposes of this Order, a project has independent utility when the project has logical starting and end points and would have a useful purpose without relying on other transportation improvements.

(b) Issuing **airspace determinations** that focus on the effect of proposed major airport development projects on the safe, efficient use of the airport's navigable airspace.



Substantial Change 7.

Recommended Limits on Design plans

Paragraphs 1004.c and d.

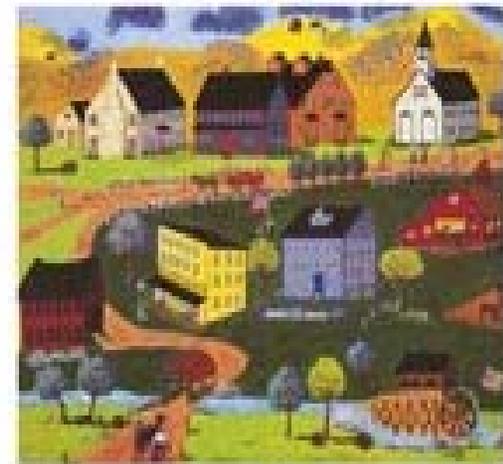
- NEPA alone. *Discourages* developing beyond **25%** of detailed plans needed. Para. 1004.c.
- Permitting or assistance.
- Consult FAA or permitting agency.

Risks / complications:

May raise public suspicions and undermine confidence in NEPA process.

May diminish public perception of ARP objectivity.

FAA makes no commitment do select a project designed beyond the limits.



Substantial Change 8.

- Order 5050.4B, paragraph 603 discusses sponsor's role. Leads to efficient FAA review and sponsor meeting its schedule.
- Paragraph 603.a notes, a **sponsor** should provide enough time to:
 - *collect needed info re: extraordinary circumstances;
 - *to allow it or FAA to complete needed analysis;
 - *to allow FAA to properly analyze extraordinary circumstances.
- Paragraph 603.b: If **sponsor** doesn't provide info or get FAA involved early in the process, delays are likely. Why? FAA must collect info and analyze it to make an **informed decision**.



Substantial Change 9.

Schedules may be set if sponsor requests

- (40 CFR 1501.8).

To meet Ex. Order 13274 or Vision 100 needs.

See Paragraph 904.

Order does **not** require schedules...why?

Each airport is different and has
unforeseen, unique issues.

Scheduling considerations:

- Scoping input;
- Accuracy and completeness of Master Plan data and information;
- Public concerns;
- Analyses complexity and data needs.

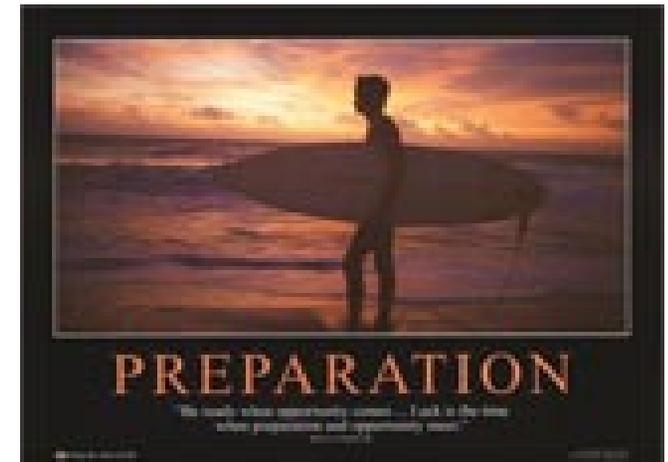


Substantial Change 10.

Expanded information on the scoping process.

Paragraphs

- 905. Scoping in General.
- 906. Ways to Enhance Scoping.
- 910. FAA duties.
 - * ID requirements/interested parties;
 - * ID cooperating agencies..that must approve or has expertise?
 - * Focus EIS..what's important/what's not.
- 911. Sponsor roles during scoping.
 - * Describe airport ops.
 - * Be a liaison.



Substantial Change 11.

Discusses what an “**unresolved conflict**” is for EA purposes.

- “Ambiguous” term.
- When a resource has various uses.
- Example. Airport needs wetland for runway.

vs.

Town needs wetland to retain floodwater.

Normally, if special purpose law involved, an “unresolved conflict” exists.

Paragraph 706.d(5)(a).



Substantial Change 12.

MAKE NEPA EFFICIENT.

- Chapter 15 discusses **streamlining** for airports.
- Vision 100 addresses **capacity/safety/security**.
- DOT **deference** re: purpose and need / alternatives...**but**
- Ex. Order 13274 addresses DOT Secretary nominees.

- * Federal priority to those actions
- * Expedite agency coordination.
- * Reduce delays.
- * Stress accountability and quality.
- * Streamlining agreement...

many participants; dispute resolution protocol;
explain roles; consensus points;
facilitator; milestone dates.

