



McBreen & Kopko

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Aviation Group Client Update

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FAA, DOT SEEKS COMMENTS ON APPLICABILITY OF NEPA TO REVIEW OF AIRPORT WILDLIFE HAZARD MANAGEMENT PLANS

On October 19, 2016, the FAA, DOT issued a notice and request for comments on [Applicability of National Environmental Policy Act \(NEPA\) to Federal Aviation Administration \(FAA\) Review of Airport Wildlife Hazard Management Plans](#). The comment period has been extended until **January 17, 2017**.

Purpose. The FAA Office of Airports is clarifying a program guidance issued in 2006 concerning how federal environmental laws apply to FAA approval of a new or updated airport Wildlife Hazard Management Plan (WHMP). The FAA seeks to update and clarify the guidance due to recent issues and questions that have been raised. The clarification concerns how federal environmental laws apply to FAA approval of a new or updated WHMP and includes circumstances where the FAA would delineate which individual measures in a plan the airport may implement based upon a categorical exclusion without further environmental review or coordination.

Background. Title 14 CFR part 139 requires in part that when the FAA determines that a wildlife hazard management plan is needed, the certificate holder must formulate and implement a plan using the wildlife hazard assessment as a basis. The plan must provide measures to reduce or eliminate wildlife hazards to air carrier operations, and be submitted to (and approved by) the FAA prior to implementation. In 2006, the FAA's Office of Airports issued Program and Policy Guidance Letter 92 ("Policy 92") to address questions about the applicability of NEPA to FAA approval of WHMPs, and the certificate holder's implementation of those plans. The FAA is proposing to revise Policy 92 document following from apparent confusion arising from the language of Section 209 of FAA Order 5050.4B referenced by Policy 92 that causes readers to infer that NEPA requirements apply primarily in the context of Airport Improvement Program grants or Airport Layout Plan approvals as opposed to being applicable to the federal action of approving the WHMP.

If you have any questions or would like further information, please contact Shelley Ewalt.

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McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.

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