

## Title 14—AERONAUTICS AND SPACE

### Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 8153; Amdt. 137-3]

#### PART 137—AGRICULTURAL AIRCRAFT OPERATIONS

##### Miscellaneous Amendments

The purpose of this amendment to Part 137 of the Federal Aviation Regulations is to modify the definition of agricultural aircraft operation; to relax the requirement regarding carriage in the aircraft of airworthiness and registration certificates; to change the title of § 137.37 to reflect the proper meaning of that section; and to restrict operations over noncongested areas to the actual dispensing operation.

This amendment is based upon a notice of proposed rule making (Notice 67-20) published in the FEDERAL REGISTER on May 12, 1967 (32 F.R. 7183).

Part 137 requires a person to have an agricultural aircraft operator certificate to conduct agricultural aircraft operations. The definition of agricultural aircraft operation as presently worded in § 137.3 limits the meaning of the term to the dispensing of economic poison and any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, but clause (3) of the definition does not limit the other activities covered to dispensing operations.

The specialized experience, training, and testing required to assure safety in dispensing material from an aircraft is not required, in the interest of safety, of a person who wishes to conduct activities which do not involve any dispensing of materials, such as bird chasing and antifrost agitation of the air. The same considerations apply in the case of a person who drops live insects for pest control purposes, to the extent that the dispensing of economic poisons or other substances is not involved.

Accordingly, this amendment to clause (3) of § 137.3 limits other activities directly affecting agriculture, horticulture, or forest preservation to those involving dispensing and expressly excludes the dropping of live insects as a dispensing activity. This permits persons other than Part 137 certificate holders to conduct nondispensing type agricultural activities without an agricultural aircraft operator certificate if, where appropriate, they obtain a waiver from the provisions of FAR Part 91. On the other hand, the holder

of an agricultural aircraft operator certificate, by virtue of the certificate, has demonstrated his ability to safely conduct nondispensing operations as well as dispensing operations. For this reason, paragraph (c) is added to § 137.29 by this amendment to permit a Part 137 certificate holder to deviate from FAR Part 91 to the extent authorized for dispensing operations by Part 137, without obtaining a certificate of waiver, when conducting certain nondispensing activities in accordance with the operating rules of Part 137.

The notice recognized that as a result of the chemical properties of certain materials dispensed from aircraft and the frequent cleaning of aircraft to remove the residue of chemicals, the airworthiness and registration certificates, which must be permanently displayed in the aircraft, often are damaged and must be replaced with new certificates obtained from the FAA. This creates a burden on both the owner and the FAA. As proposed in the notice, this amendment permits the airworthiness and registration certificate to be removed from the aircraft. When any airworthiness or registration certificate is removed from an aircraft, it must be kept at the base from which the dispensing operation is conducted and available for inspection by appropriate authorities. For the purpose of this amendment, the base from which the dispensing operation is conducted is intended to mean the permanent base of the operator, unless dispensing operations are being conducted from a temporary base where the operator has temporarily stationed maintenance facilities and personnel. If such a temporary base is established, it is the intent of the amendment that such base be considered the base from which the dispensing operation is conducted and, therefore, the place where the certificates removed from the aircraft must be kept and made available for inspection by appropriate authorities.

This amendment changes the title to § 137.37 to read "Manner of Dispensing" so that it will more accurately reflect the purpose of that section.

Section 137.49 is also amended to clearly reflect that it covers only the actual dispensing operation, but includes the approaches, departures, and turn-arounds reasonably necessary for the operation. In addition, this amendment deletes § 137.13 and references to it, since the section is no longer applicable.

Finally, there is the matter of § 137.39 which presently prohibits, in part, the dispensing of an economic poison for a use other than that for which it is registered with the U.S. Department of Agriculture (USDA). Notice 67-20 proposed to amend § 137.39 to permit the dispens-

ing of a USDA registered economic poison for other than registered uses when approved by the State in which it is to be used.

However, by letter dated February 21, 1968, the Assistant Secretary, U.S. Department of Agriculture requested that FAA withdraw the proposed amendment to § 137.39. The following excerpts from that letter explain the reasons for the USDA request:

We have again reviewed the notice of proposed rule making concerning agricultural aircraft operations published in the FEDERAL REGISTER on May 12, 1967, which would permit the dispensing of an economic poison for a purpose other than that for which it was registered with the U.S. Department of Agriculture or contrary to use limitations. After further consideration, we are concerned about the serious problems in administering the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135-135K), which would result from the enactment of this proposal.

This amendment would hamper our enforcement activities.

• • • one effect of the proposed amendment to § 137.39 would be that a manufacturer could ship a registered economic poison into a State for a use entirely consistent with the proposed amendment and yet violate the criminal provision of the Federal Insecticide, Fungicide, and Rodenticide Act if the intended use differed in substance from that accepted in connection with the registration.

• • • Section 137.39 could be construed as condoning a use which we believe to be improper under our Act and regulations.

It is conceivable that some States may not have the technical competence to evaluate the safety of an economic poison that has not been registered with the U.S. Department of Agriculture, particularly in regard to residues in food. This could lead to seizure and condemnation of the crops shipped in interstate commerce.

Although our letter of October 12, 1966, does not support our present views, we hope you will give serious consideration to withdrawing § 137.39 of the notice of proposed rule making. The Federal Aviation Administration's regulations now in effect provide the States with adequate control measures. In the past, delays in registration may have presented a problem to the States in cases of emergency situations, but this should no longer be considered an obstacle since the Department is now prepared to handle such matters on an emergency basis.

Accordingly, in response to the foregoing request of the Assistant Secretary of the U.S. Department of Agriculture, the proposal published in Notice 67-20 to amend FAR 137.39 is hereby withdrawn.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all comments received.

In consideration of the foregoing, Part

(As published in the Federal Register 33 F.R. 9600 on July 2, 1968)

137 of the Federal Aviation Regulations is amended, effective August 1, 1968, as follows:

1. By amending subparagraph (3) of the definition of Agricultural Aircraft Operation in § 137.3 to read as follows:

§ 137.3 Definition of terms.

\* \* \* (3) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects.

§ 137.11 [Amended]

2. By striking out the words "§ 137.13 and" in § 137.11(a).

§ 137.13 [Deleted]

3. By deleting § 137.13.

4. By adding a new paragraph (c) to § 137.29 to read as follows:

§ 137.29 General.

(c) The holder of an agricultural aircraft operator certificate may deviate from the provisions of Part 91 of this chapter without a certificate of waiver, as authorized in this subpart for dispensing operations, when conducting nondispensing aerial work operations related to agriculture, horticulture, or forest preservation in accordance with the operating rules of this subpart.

5. By amending § 137.33 by designating the provisions of that section as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 137.33 Carrying of certificates.

(b) Notwithstanding Part 91 of this chapter, the registration and airworthiness certificates issued for the aircraft need not be carried in the aircraft. However, when those certificates are not carried in the aircraft they shall be kept available for inspection at the base from which the dispensing operation is conducted.

§ 137.37 [Amended]

6. By striking out the word "hazardous" in the title of § 137.37 and inserting the words "manner of" in place thereof.

7. By amending § 137.49 to read as follows:

§ 137.49 Operations over other than congested areas.

Notwithstanding Part 91 of this chapter, during the actual dispensing operation, including approaches, departures, and turnarounds reasonably necessary for the operation, an aircraft may be operated over other than congested areas below 500 feet above the surface and closer than 500 feet to persons, vessels, vehicles, and structures, if the operations are conducted without creating a hazard to persons or property on the surface.

(Secs. 307(c), 313(a), 601, 607, Federal Aviation Act of 1958; 49 U.S.C. 1348(c), 1354(a), 1421, 1427)

Issued in Washington, D.C., on June 26, 1968.

WILLIAM F. MCKEE,  
Administrator.