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Part XII

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Part 157
Construction, Alteration, Activation, and
Deactivation of Airports; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 157**

[Docket No. 25708, Amdt. No. 157-5]

RIN 2120-AB74

Construction, Alteration, Activation, and Deactivation of Airports**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; delay of effective date.

SUMMARY: This action delays, until August 30, 1991, the effective date of an amendment to part 157 of the Federal Aviation Regulations (FAR). That amendment was to become effective on February 27, 1991. The amendment establishes, in part, a requirement for operators to provide the FAA with notice prior to establishing (1) a temporary airport located within a specified distance of another airport, or (2) a temporary heliport located in a residential, business, or industrial area. Based on comments from aviation organizations and operators, the FAA has identified an ambiguity in the amendment. Specifically, the amendment may imply that a limited number of landings at a site that is not an established airport constitutes the establishment of a new airport which would require notice to the FAA. To eliminate any potential interpretation of the regulation to require notice in situations where notice is not needed or intended by the FAA, the agency is considering further action that would expressly limit the applicability of Part 157 and address the ambiguity. The FAA intends to issue that action in the near future.

EFFECTIVE DATE: February 26, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Background**

On August 27, 1990, the FAA published Amendment No. 157-4 which revises, effective February 27, 1991, certain notice requirements associated with the construction, alteration, activation, and deactivation of airports (55 FR 34994). Amendment No. 157-4 was based on comments to a Notice of Proposed Rulemaking published on October 4, 1988 (Docket No. 25708, Notice No. 88-15; 53 FR 39062).

Specifically, Amendment No. 157-4 revises part 157 (CFR 14 part 157) in the following manner: (1) It provides for a notice requirement for the establishment of, or a change to, a traffic pattern; (2) It clarifies the notice requirement for certain changes in the status of airport use; (3) It defines the term "private use of public lands or waters"; (4) It eliminates the term "personal use" as an airport use category; (5) It provides for an FAA determination void date; (6) It reduces the time that an airport proponent must notify the FAA of the completion of an airport project from 30 to 15 days; (7) It clarifies the scope of part 157 to include consideration of the safety of persons and property on the surface, and states that an FAA determination is not based on any environmental or land-use compatibility issue; (8) It incorporates certain editorial changes to simplify and clarify part 157; and (9) It establishes a reporting requirement for certain temporary airports and landing areas.

Based on comments from various aviation users and proponents, the FAA believes that § 157.1, Applicability (as revised by Amendment No. 157-4) may suggest that an operator who conducts a limited number of landings and takeoffs at a site that is not an established airport has established a new airport, which would require that operator to provide notice to the FAA. The FAA believes that the potential misunderstanding of the revised § 157.1 was created, in part, because of the difference in the wording and form of § 157.1 as proposed in Notice No. 88-15 and as it appeared in Amendment No. 157-4.

The Rule

To eliminate any potential reading of an agency regulation that suggests that notice is required in situations where notice is not needed or intended, the FAA is delaying the effective date of Amendment No. 157-4 to provide time for review and revision of the provisions involved to reduce the possibility of misunderstanding. The FAA intends to complete that action in the near future.

Effective Date

This amendment is adopted as a final rule to ensure that the public will not be unnecessarily inconvenienced by an apparent requirement for notice which the agency did not intend and does not require. Accordingly, I find that further notice and comment are unnecessary and contrary to the public interest, and this amendment is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b). For the same reasons, and because this

amendment relieves a restriction, I find that good cause exists for making the amendment effective immediately.

Economic Evaluation

An analysis of the economic impact of the changes to part 157 resulting from Amendment No. 157-4 appears in the preamble discussion to that amendment (55 FR 34994; August 27, 1990). This delay of effective date does not affect that analysis; therefore, further regulatory evaluation is unnecessary. Additionally, the FAA believes that safety will not be affected by this delay of effective date because the time period of this delay is minimal, and the FAA is receiving voluntary reports of traffic pattern changes and temporary airport establishments from airport proponents, in addition to all other airport changes for which notice is required under existing part 157.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to insure, among other things that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

This rule will delay, until August 30, 1991, the effective date of an amendment to FAR part 157. The Regulatory Flexibility Determination that analyses the effect of the part 157 amendment is located in the docket to this rule. This delay in implementing the part 157 amendment will impose no additional costs to any party. Hence, the FAA certifies that the determination has not changed and that this rule will not have a significant economic impact, neither positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This amendment delays the effective date of an agency regulation. It does not

change any reporting requirement associated with part 157.

Conclusion

For the reasons discussed in the preamble, and based on the regulatory analysis contained in the preamble to Amendment No. 157-4, the FAA has determined that this regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in Part 157

Airports, Aviation safety.

The Amendment

For the reasons set forth above, 14 CFR part 157 of the Code of Federal Regulations is amended as follows:

PART 157—NOTICE OF CONSTRUCTION, ALTERATION, ACTIVATION, AND DEACTIVATION OF AIRPORTS

1. The authority citation for part 157 continues to read as follows:

Authority: Secs. 309, 313(a), 314, 72 Stat. 751; 49 U.S.C. 1350, 1354(a), 1355.

2. The effective date of the revision to 14 CFR part 157 (Amendment No. 157-4), February 27, 1991, is delayed. The new effective date is August 30, 1991.

Issued in Washington, DC, on February 22, 1991.

James B. Busey,

Administrator.

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