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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, Amendment No. 157-6]

RIN 2120-AE52

Construction, Alteration, Activation, and Deactivation of Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments to final rule.

SUMMARY: On July 24, 1991, the FAA issued a final rule concerning part 157 of the Federal Aviation Regulations that deleted an impending requirement to provide 90 days advance notice of construction, alteration, activation, and deactivation of certain temporary airports and heliports located within a specified distance from another airport; revised the applicability section of part 157 to exclude proposals involving the intermittent use of sites that are not established airports; and clarified that telephone notice for certain emergency or unreasonable hardship situations be directed to the appropriate Airports District/Field Office or Regional Office. The final rule revised certain provisions contained in a previous amendment to this part before the effective date of that amendment. The final rule became effective on August 30, 1991. The public was invited to submit comments on the final rule by November 21, 1991. Based on the comments received, the FAA has determined that no further rulemaking action is necessary.

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

SUPPLEMENTARY INFORMATION:**Background**

On October 4, 1988, the FAA published a notice of proposed rulemaking (notice No. 88-15, 53 FR 39062) that addressed certain safety issues concerning the construction, alteration, activation, and deactivation of airports. On August 27, 1990, the FAA published a final rule (amendment No. 157-4, 55 FR 34994), based on the proposals contained in Notice No. 88-15 and the public comments to that notice. Amendment No. 157-4: (1) Established a requirement to provide notice to the Administrator prior to establishing or changing a traffic pattern

or traffic pattern altitude; (2) defined a new term, "private use of public lands or waters;" (3) eliminated the term "personal use" as an airport use designation; and (4) revised the applicability section of part 157 regarding notice criteria.

Prior to Amendment No. 157-4, part 157 notice criteria applied to any proposal to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport except for those proposals involving: (1) Certain projects for which Federal aid had been requested, and (2) a "temporary" airport or aircraft landing or takeoff area. The term "temporary" meant that the airport or aircraft landing or takeoff area was intended to be used solely in visual flight rules (VFR) conditions for less than 30 days, with no more than 10 operations a day. Amendment No. 157-4 revised the temporary airports exclusion from the notice requirements of part 157. The amendment provided that only the following temporary airports and heliports would be excluded from the part 157 notice provisions: (1) Temporary private use airports for fixed-wing aircraft and ultralight vehicles that are located beyond specified distances from other airports, and (2) temporary private use heliports and helicopter landing areas that are located outside a control zone, a residential, business, or industrial area, and beyond specified distances from other airports and heliports.

After the publication of Amendment No. 157-4, and before its original effective date of February 27, 1991, the FAA received comments from aviation organizations and operators regarding the potential impact of the revised notice requirement for temporary airports and landing areas. To provide time to review and possibly revise Amendment No. 157-4, the FAA delayed its effective date until August 30, 1991 (Amendment No. 157-5, 56 FR 8674, February 28, 1991).

On July 24, 1991, the FAA published a final rule (Amendment No. 157-6, 56 FR 33994) that eliminated the impending requirement to provide 90 days advance notice of construction, alteration, activation, and deactivation of certain temporary airports and heliports. Amendment No. 157-6 also revised the applicability section of part 157 to exclude proposals involving the intermittent use of sites that are not established airports. The "intermittent use of a site" means that the site is used or intended to be used in VFR conditions for no more than three days in any one week with no more than 10 operations a day. Finally, Amendment No. 157-6 clarified that telephone

notice for certain emergency or unreasonable hardship situations should be directed to the appropriate FAA Airports District/Field Office or Regional Office. Amendment No. 157-6 and Amendment No. 157-4 (with the revisions noted above) became effective on August 30, 1991.

The FAA invited comments on amendment No. 157-6. The FAA stated that the request for comments to Amendment No. 157-6 did not represent a reopening or reconsideration of the proposals in notice No. 88-15, or of the revisions resulting from amendment No. 157-4 that were not revised or otherwise affected by amendment No. 157-6. Therefore, issues relating to the notice requirement for a change to, or the establishment of an airport traffic pattern; the elimination of the term "personal use" as an airport use designation; and other changes resulting from amendment No. 157-4 will not be specifically addressed in this document.

Discussion of Comments

The FAA received eleven comments to amendment No. 157-6. Eight commenters address changes resulting from amendment No. 157-4 that were not revised or affected by amendment No. 157-6. As discussed above, such changes will not be discussed in this document.

One commenter does not believe that there was a need for regulations to require notice of temporary aircraft operations to and from a landing site that is not intended to be used as a permanent airport or heliport. Amendment No. 157-6 provides that notice of temporary airports and landing or takeoff areas would be required if the airport will be used (other than on an intermittent basis) for a period of more than 30 days, or if more than 10 operations will be conducted a day. The FAA believes that a level of activity in excess of 10 operations a day warrants closer examination for appropriate consideration of the potential impact to adjacent airspace users.

Several commenters believe that the 90-day advance notification requirement would cause economic hardship for certain operators, particularly emergency medical service and other helicopter operators.

Section 157.5(b)(1) provides that "in an emergency involving essential public service, public health, or public safety or when the delay arising from the 90-day advance notice requirement would result in an unreasonable hardship, a proponent may provide notice to the appropriate FAA Airport District/Field Office or Regional Office by telephone

or other expeditious means as soon as practicable in lieu of submitting FAA Form 7480-1." The FAA believes that this provision provides for adequate relief from the 90-day advance notice requirements for emergency medical service helicopter operations and other similar emergency or unreasonable hardship situations.

One commenter disagrees with the provision that excludes from the applicability section of part 157 a proposal involving the intermittent use of a site that is not an established airport. The commenter believes that the provision "lowers standards" pertaining to notice of construction, alteration, activation, or deactivation of landing areas. Further, the commenter believes that the change could provide a "loop hole" for operators whose landing intentions are to rustle cattle, transport drugs, or illegally dispose of chemicals. This provision was promulgated because there may be a number of reasons for multiple operations to a site with no intent to establish an airport within the meaning of part 157. For example, medical, firefighting, law enforcement, construction, logging, and agricultural functions may require repeated flights to and from an accident, incident, construction, or other temporary landing site. Certain construction, agricultural, and logging functions may not require the

continuous use of a site over the course of the project but would instead involve occasional and infrequent return visits to the site. Prior to Amendment No. 157-4, proponents who intended to operate to and from a site on an intermittent or sporadic basis for more than 30 days were required to notify the FAA 90 days before conducting such an operation. Such notice would be required even in a situation involving only two operations to the same site when the return visit is conducted 30 or more days after the first operation. The FAA believes that the majority of such operations would not require or result in the establishment of an airport nor constitute an intent to establish an airport.

With regard to the commenter's concern that the intermittent-use exclusion could affect the ability to deter certain illegal activities, the primary purpose of part 157 is to establish notice requirements for the construction, alteration, activation, or deactivation of certain airport, heliport, and aircraft landing area proposals. Such notice provides the FAA with an opportunity to conduct an aeronautical study of an airport proposal to determine the effects of that proposal on neighboring airports, existing or contemplated traffic patterns at neighboring airports, and existing airspace environment and projected

FAA programs. Further, the FAA studies the effects that existing or proposed man-made objects and natural objects within the affected area would have on the airport proposal. As such, part 157 is not intended or designed to assist law enforcement agencies or otherwise prevent or deter illegal activity. However, the FAA agrees with the commenter regarding the general need for reasonable measures to monitor and deter illegal activities. Accordingly, the FAA cooperates with agencies such as the United States Customs Service, the Federal Bureau of Investigation, the Department of Defense and other Federal and state agencies in support of their law enforcement and national security missions.

Conclusion

The FAA has determined, after carefully considering the comments submitted in response to amendment No. 157-6, that no further rulemaking action is necessary at this time. Amendment No. 157-6 remains in effect as prescribed by the July 24, 1991, final rule.

Issued in Washington, DC, on February 25, 1994.

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and Aeronautical Information Division.*

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