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Part III

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Part 157
Notice of Construction, Alteration,
Activation, and Deactivation of Airports;
Final Rule With Request for Comments**

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

[Docket No. 25708, Amendment No. 157-6]

RIN: 2120-AE20

Notice of Construction, Alteration, Activation, and Deactivation of Airports**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comments.

SUMMARY: This action revises a previous amendment to this part before the effective date of that amendment: (1) By deleting a requirement for operators to provide the FAA with notice prior to establishing an airport located within a specified distance from another airport, or prior to establishing a heliport located in a residential, business, or industrial area; (2) by excluding from the notice requirements of this part those proponents who intend to use, on an intermittent basis for less than one year, a site that is not an established airport; and (3) by clarifying that telephone notice for situations involving an emergency public service or an unreasonable hardship arising from a delay due to the 90-day advance notice requirement should be directed to the appropriate Airports District/Field Office or Regional Office. This action is expected to eliminate any potential reading of an agency regulation which may suggest that notice would be required in situations where such notice is not needed or intended.

DATES: Effective date: August 30, 1991. Comments received on or before November 21, 1991 will be considered.

ADDRESSES: Send comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25708, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments to: Federal Aviation Administration, Rules Docket, Room 915-C, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Kagehiro, Airspace and Obstruction Evaluation Branch, ATP-240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3075.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Even though this rule is final, interested persons are invited to submit written data, views, or arguments pertinent to the issues addressed by this amendment. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25708." The postcard will be date/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the docket number.

Background

On August 27, 1990, the FAA published Amendment No. 157-4 which revised 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: (1) Provides for a notice requirement for the establishment of, or a change to, a traffic pattern; (2) clarifies the notice requirement for certain changes in the status of airport use designation; (3) defines the term "private use of public lands or waters"; (4) eliminates the term "personal use" as an airport use designation; (5) provides for an FAA determination void date; (6) reduces the time from 30 to 15 days that an airport proponent must notify the FAA of the completion of an airport project; (7) 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) incorporates

certain editorial changes to simplify and clarify Part 157; and (9) establishes a reporting requirement for certain airports and landing areas. The original effective date of Amendment No. 157-4 was February 27, 1991.

After publication of Amendment No. 157-4 (August 27, 1990) and before the original effective date of Amendment No. 157-4 (February 27, 1991), the FAA received comments from aviation organizations and operators regarding the revised notice requirement for temporary airports and landing areas. The majority of these commenters believed that prior notice would be required for a limited number of aircraft landings at a site that is not an established airport but is located within a certain distance from another airport or located in a residential, business, or industrial area. Based on those comments, the FAA reviewed Amendment No. 157-4 and concluded that the provisions of § 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, in effect, established a new airport. Such an interpretation, while not the FAA's intent, would imply that the operator would have been required to notify the FAA at least 90 days in advance of any such landing. The FAA believed 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.

On February 28, 1991, the FAA delayed the effective date of Amendment No. 157-4 to August 30, 1991 (Amendment No. 157-5; 56 FR 8674) to eliminate any potential reading of an agency regulation that suggests that notice is required in situations where such notice is not needed or intended. The FAA stated that the delay was necessary to provide time for review and possible revision of the provisions involved to reduce the possibility of misunderstanding.

FAA Response

This amendment responds to comments regarding the revised notice requirements for certain temporary airports and landing areas. This action does not affect any other revision to Part 157 resulting from Amendment No. 157-4.

The FAA, in Amendment No. 157-4, had intended to establish a notice requirement for those operators establishing airports in proximity to

other airports or located in residential, business, or industrial areas. Such notice provides the FAA with an opportunity to conduct an aeronautical study of an airport proposal and to determine the effects of that proposal on neighboring airports, on existing or contemplated traffic patterns at neighboring airports, and on the existing airspace environment and projected FAA programs. Further, the FAA would have the opportunity to study the effects that existing or proposed manmade objects and natural objects within the affected area would have on the airport proposal.

However, the FAA recognizes that 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. Additionally, 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. Because the notice requirements of this part currently exclude only those proponents who use or intend to use a site for less than 30 consecutive days, proponents who must use a site on an intermittent basis, for a period in excess of 30 days, are required to provide 90-days advance notice. Such notice would be required in a situation involving 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.

Currently, an operator who conducts no more than 10 operations a day at a site that is not intended to be used for more than 30 consecutive days, is not required to provide notice under part 157. For the purposes of this part, the FAA considers one operation to consist of both the flight to the site and the associated departure from that site. Ten operations therefore, would consist of 10 landings and 10 associated takeoffs.

The FAA acknowledges that § 157.1 (as revised by Amendment No. 157-4, effective August 30, 1991) may suggest that notice would be required in any situation involving an aircraft landing at a site that is located in a residential,

business, or industrial area or a site within a certain distance from another airport. Such a notice requirement would result in hundreds of notices a day from aircraft operators conducting routine construction, logging, agricultural, or law enforcement operations to and from sites that are not, nor intended to be, established airports. Accordingly, the FAA is amending the language and form of § 157.1 (as revised by Amendment No. 157-4) to correspond with the current language of this section and as proposed in Notice 88-15. This revision is intended to minimize the possibility of different interpretations and eliminate the suggestion of a notice requirement where no such requirement is needed or intended. Further, the FAA is excluding those proponents who intend to use a site on an intermittent basis for less than one year. For the purposes of this part, the term "intermittent use of a site" is defined as the use of a site for no more than 3 days in one week and at which no more than 10 operations will be conducted in any one day. The FAA continues to believe that the current threshold of 10 operations a day is a reasonable limit above which the number of operations may begin to have an effect on the operation at neighboring airports. The FAA believes that those functions involving a level of activity in excess of 10 operations a day warrant closer examination by the FAA for appropriate consideration of the potential impact to adjacent airspace users. The FAA also considers a limit of 3 days a week as a reasonable indicator of the intermittent use of a site as opposed to the use of a site for 5 or more days a week as being representative of the continuous use of a site.

Section 157.5 (as revised by Amendment No. 157-4) provides that an operator must submit notice of intent to establish a new airport, FAA Form 7480-1, at least 90 days before work is to begin. However, § 157.5(b)(1) provides that in situations involving public service, public health, or public safety emergencies, or when delay would result in an unreasonable hardship, an operator may provide notice to the FAA by telephone or any other expeditious means. If operations have ceased and the site is not intended to be used again, the operator is not required subsequently to submit written notice to the FAA on Form 7480-1.

The FAA is clarifying § 157.5 (as revised by Amendment No. 157-4) by explaining that operators providing telephone notification in accordance with § 157.5(b)(1) should contact the

appropriate FAA Airport District/Field Office or Regional Office as soon as practicable. Amendment No. 157-4 did not identify the appropriate FAA office to contact by telephone.

The Rule

This action revises a previous amendment to this part (Amendment No. 157-4) which will become effective on August 30, 1991. To eliminate the possibility of misinterpretation of agency rulemaking, the FAA is revising § 157.1 (as revised by Amendment No. 157-4) to provide that an airport at which flight operations will be conducted under visual flight rules (VFR), and will be used for less than 30 days with no more than 10 operations a day, is excluded from the notice requirements of part 157, regardless of where that airport is located. Additionally, proponents who use or intend to use a site that is not an established airport on an intermittent basis (no more than 3 days in a week and for no more than 10 operations a day) are excluded from the notice requirement. Section 157.5 is also being revised to specify the appropriate FAA office to be notified by telephone for situations involving an emergency, public service or an unreasonable hardship to the operator.

This action only affects those changes to Part 157 (resulting from Amendment No. 157-4) which involve the revised notice requirements for certain airports and landing areas. The other changes to Part 157 resulting from Amendment No. 157-4, are not affected by this action and will become effective on August 30, 1991. To reflect the correct and intended verbiage of part 157 as a result of Amendment No. 157-4 and this action, the FAA is printing part 157 in its entirety.

Effective Date

This amendment is adopted as a final rule to clarify the intent of an agency regulation and 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. The revision of part 157 was previously proposed for public comment, and extensive public comments were received on the issues addressed in this amendment. Accordingly, I find that further notice and delay in the clarification of an agency regulation are unnecessary and contrary to the public interest, and that 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 coincident with the August 30 effective date of Amendment No. 157-4.

Requests for Comments

Comments are requested on the specific issues addressed by this amendment, particularly on the clarifying language of revised § 157.1, Applicability. The FAA received approximately 60 comments regarding the notice requirement for the establishment of airports located in proximity to another airport and for the establishment of heliports located in residential, business, and industrial areas. The FAA is requesting additional comments to provide all interested and affected parties with an opportunity to express their views and opinions on this matter. 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; the provision for FAA determination void dates; and other changes resulting from Amendment No. 157-4 have been the subject of notice and comment proceedings, and this request for comments does not represent a reopening or reconsideration of these issues.

Economic Evaluation

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each proposed change outweigh potential costs. Accordingly, the FAA has examined the economics of this proposal in an effort to identify and quantify benefits and costs. As a result of that examination, the agency has determined that benefits are positive, but minimal, and costs are negligible.

This rule relieves the public from an unintended and unnecessary notice requirement which would have resulted in the absence of this action. In particular, this rule will relieve certain airport proponents from the burden of a 90-day notice requirement prior to the establishment of an airport located within a specified distance from another airport, the establishment of a heliport located in a residential, business, or industrial area; or the intermittent use of a site for less than one year. The FAA has determined that this rule does not impose additional cost burdens on the public or on the FAA and is, in fact, cost relieving.

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 clarification of regulatory requirements does not affect that analysis. Because there is no impact resulting from this rule, and this rule is relieving in nature, the FAA has not performed a further regulatory evaluation.

International Trade Impact Statement

This rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. This assessment is based on the fact that this rule will have no impact on either U.S. or foreign air carriers.

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 12612, 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 action clarifies an agency regulation and 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 14 CFR 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 by revising it to read as follows:

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

Sec.

- 157.1 Applicability.
- 157.2 Definition of terms.
- 157.3 Projects requiring notice.
- 157.5 Notice of intent.
- 157.7 FAA determinations.
- 157.9 Notice of completion.

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

§ 157.1 Applicability.

This part applies to persons proposing to construct, alter, activate, or deactivate a civil or joint-use (civil/military) airport or to alter the status or use of such an airport. Requirements for persons to notify the Administrator concerning certain airport activities are prescribed in this part. This part does not apply to projects involving:

(a) An airport subject to conditions of a Federal agreement that requires an approved current airport layout plan to be on file with the Federal Aviation Administration; or

(b) An airport at which flight operations will be conducted under visual flight rules (VFR) and which is used or intended to be used for a period of less than 30 consecutive days with no more than 10 operations per day.

(c) The intermittent use of a site that is not an established airport, which is used or intended to be used for less than one year and at which flight operations will be conducted only under VFR. For the purposes of this part, *intermittent use of a site* means:

(1) The site is used or is intended to be used for no more than 3 days in any one week; and

(2) No more than 10 operations will be conducted in any one day at that site.

§ 157.2 Definition of terms.

For the purpose of this part:

Airport means any airport, heliport, helistop, vertiport, gliderport, seaplane base, ultralight flightpark, manned balloon launching facility, or other aircraft landing or takeoff area.

Heliport means any landing or takeoff area intended for use by helicopters or other rotary wing type aircraft capable of vertical takeoff and landing profiles.

Private use means available for use by the owner only or by the owner and other persons authorized by the owner.

Private use of public lands means that the landing and takeoff area of the proposed airport is publicly owned and the proponent is a non-government entity, regardless of whether that landing and takeoff area is on land or on

water and whether the controlling entity be local, State, or Federal Government.

Public use means available for use by the general public without a requirement for prior approval of the owner or operator.

Traffic pattern means the traffic flow that is prescribed for aircraft landing or taking off from an airport, including departure and arrival procedures utilized within a 5-mile radius of the airport for ingress, egress, and noise abatement.

§ 157.3 Projects requiring notice.

Each person who intends to do any of the following shall notify the Administrator in the manner prescribed in § 157.5:

(a) Construct or otherwise establish a new airport or activate an airport.

(b) Construct, realign, alter, or activate any runway or other aircraft landing or takeoff area of an airport.

(c) Deactivate, discontinue using, or abandon an airport or any landing or takeoff area of an airport for a period of one year or more.

(d) Construct, realign, alter, activate, deactivate, abandon, or discontinue using a taxiway associated with a landing or takeoff area on a public-use airport.

(e) Change the status of an airport from private use to public use or from public use to another status.

(f) Change any traffic pattern or traffic pattern altitude or direction.

(g) Change status from IFR to VFR or VFR to IFR.

§ 157.5 Notice of intent.

(a) Notice shall be submitted on FAA Form 7480-1, copies of which may be obtained from an FAA Airport District/Field Office or Regional Office, to one of those offices and shall be submitted at least—

(1) in the cases prescribed in paragraphs (a) through (d) of § 157.3, 90 days in advance of the day that work is to begin; or

(2) in the cases prescribed in paragraphs (e) through (g) of § 157.3, 90 days in advance of the planned implementation date.

(b) Notwithstanding paragraph (a) of this section—

(1) 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. However, the proponent shall provide full notice, through the submission of FAA Form 7480-1, when otherwise requested or required by the FAA.

(2) notice concerning the deactivation, discontinued use, or abandonment of an airport, an airport landing or takeoff area, or associated taxiway may be submitted by letter. Prior notice is not required; except that a 30-day prior notice is required when an established instrument approach procedure is involved or when the affected property is subject to any agreement with the United States requiring that it be maintained and operated as a public-use airport.

§ 157.7 FAA determinations.

(a) The FAA will conduct an aeronautical study of an airport proposal and, after consultations with interested persons, as appropriate, issue a determination to the proponent and advise those concerned of the FAA determination. The FAA will consider matters such as the effects the proposed action would have on existing or contemplated traffic patterns of neighboring airports; the effects the proposed action would have on the existing airspace structure and projected programs of the FAA; and the effects that existing or proposed manmade objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. While determinations consider the effects of the proposed action on the safe and efficient use of airspace by aircraft and the safety of persons and property on the ground, the determinations are only advisory. Except for an objectionable determination, each determination will contain a determination-void date to facilitate efficient planning of the use of

the navigable airspace. A determination does not relieve the proponent of responsibility for compliance with any local law, ordinance or regulation, or state or other Federal regulation. Aeronautical studies and determinations will not consider environmental or land use compatibility impacts.

(b) An airport determination issued under this part will be one of the following:

(1) *No objection.*

(2) *Conditional.* A conditional determination will identify the objectionable aspects of a project or action and specify the conditions which must be met and sustained to preclude an objectionable determination.

(3) *Objectionable.* An objectionable determination will specify the FAA's reasons for issuing such a determination.

(c) *Determination void date.* All work or action for which notice is required by this sub-part must be completed by the determination void date. Unless otherwise extended, revised, or terminated, an FAA determination becomes invalid on the day specified as the determination void date. Interested persons may, at least 15 days in advance of the determination void date, petition the FAA official who issued the determination to:

(1) Revise the determination based on new facts that change the basis on which it was made; or

(2) Extend the determination void date. Determinations will be furnished to the proponent, aviation officials of the state concerned, and, when appropriate, local political bodies and other interested persons.

§ 157.9 Notice of completion.

Within 15 days after completion of any airport project covered by this part, the proponent of such project shall notify the FAA Airport District Office or Regional Office by submission of FAA Form 5010-5 or by letter. A copy of FAA Form 5010-5 will be provided with the FAA determination.

Issued in Washington, DC on July 19, 1991.

James B. Busey,
Administrator.

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