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SEC 157-6A

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-G, 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

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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.

[FR Doc. 91-17568 Filed 7-23-91; 8:45 am]

BILLING CODE 4910-13-M

NPRM 91-14

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91****[Docket No. 26605; Notice No. 91-14]****RIN 2120-AD-55****Temporary Flight Restrictions****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to require the operator of an aircraft used in conducting authorized news-gathering operations in an area covered by temporary flight restrictions to contact the official in charge of the on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft activities. Adoption of this proposal would reduce the potential for traffic conflicts and disruption of relief operations. This proposal would increase the level of safety afforded aircraft used in conducting rescue or disaster relief operations.

DATES: Comments must be received on or before September 23, 1991.

ADDRESSES: Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 26605, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket, Room 915, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP-230, Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9251.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the proposed rulemaking procedures by submitting such written data, views, or arguments as they may desire. Comments are invited that provide the factual basis supporting the views and suggestions presented relating to the environmental, energy, or economic impacts that may result from adoption of the proposals contained in this notice. Communications should identify the regulatory docket number or notice number and be submitted in

duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further action on the proposed revisions to the rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons before and after the closing date for comments. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No." The postcard will be date/time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM 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. Communications must identify the docket number and/or notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Currently, when temporary flight restrictions are established under § 91.137(a)(2) to provide for the safety of aircraft conducting rescue or disaster relief operations, aircraft carrying properly accredited newspeople may enter the prescribed area without prior approval after filing a flight plan. However, the pilot of such an aircraft must operate above the altitude(s) being used by rescue or disaster relief aircraft. The process by which a pilot determines which altitudes are in use is not prescribed by the current regulation. Therefore, a pilot may determine such altitudes by requesting the information directly from the rescue or disaster relief aircraft on an appropriate two-way radio frequency, by observation, or by other methods. The information obtained using these methods may be valid for only a short time, or inaccurate.

For example, in the case of temporary flight restrictions established for a forest fire being fought by aircraft dropping fire retardants, a pilot of an aircraft carrying newspeople visually determines the presence of rescue or

disaster relief aircraft, and will often overlook the fact that there may be air tankers holding outside the operations area prior to entering the area to drop fire retardants. The official in charge of on-scene activities is the logical source for accurate information concerning the aircraft operating in the operations area and can generally be reached via two-way radio communications.

Recently, situations involving aircraft carrying newspeople and emergency response aircraft in areas covered by temporary flight restrictions have occurred. For example, the U.S. Department of the Interior and the Forest Service have indicated that aircraft carrying accredited newspeople have been observed on several occasions operating below the altitudes being used by rescue or disaster relief aircraft. Specifically, on July 10, 1989, during fire suppression in Meadow Valley, Washington (Bertha Fire Helibase), a Bell 206 Helicopter was observed heading toward the fire scene, flying at approximately 50 feet above ground level (AGL), directly over the helibase. Temporary flight restrictions were in effect over the area. Due to the unknown position of the intruding helicopter, fire suppression activities were temporarily suspended. Another incident occurred on June 29, 1989, near Sunflower, Arizona, over mountainous terrain at 4,300 feet mean sea level. A fire had been reported out of control and temporary flight restrictions were in effect for the area. An air tanker had just made a drop and was climbing out of the mountain canyon when a Robertson R-22 Helicopter was observed flying up the canyon at or near the same altitude, approximately 700 feet AGL. The tanker was required to increase the rate of climb in order to avoid the helicopter. Subsequently, the intruding helicopter landed at the firebase heliport. The pilot of the intruding helicopter was under contract to a news service. After landing, the pilot was informed of the temporary flight restrictions and the potentially hazardous situation that he had created for himself, his passengers and the crew of the air tanker. At no time prior to landing at the heliport did the pilot of the intruding helicopter make contact with the official in charge of on-scene activities.

The FAA has determined that such incidents demonstrate the need for stricter control of news-gathering operations using aircraft. Such control would be facilitated by having the news-gathering aircraft operate within the parameters established by the on-scene emergency response official. When a

temporary flight restriction is issued through the notice to airman (NOTAM) system, information containing the person in charge of the emergency, the appropriate phone number, and the FAA coordination facility are in the NOTAM. Further, this contact would result in an appropriate air-to-air or air-to-ground radio frequency being given to the aircraft operator. Failure to obtain pertinent information from the official in charge of on-scene emergency response activities and remain clear of the routes, altitudes, and operating areas identified within the temporary flight restriction area would be a violation of § 91.137.

The Proposal

The FAA is proposing to revise § 91.137(c)(5) to require: (1) All pilots of aircraft carrying properly accredited newsmen to first contact the official in charge of on-scene emergency response activities to ascertain the routes, altitudes, and operating areas in use by disaster relief aircraft; and (2) that the aircraft be operated clear of all disaster relief aircraft operations identified by the official in charge.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA. The full regulatory evaluation provides more detailed analysis of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society for each regulatory change outweigh potential costs. This Order also requires the preparation of a Regulatory Impact Analysis of all major rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not major as defined in the Executive Order; therefore, a full regulatory analysis that includes the identification and evaluation of cost reducing alternatives to the proposal has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without

identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (RFA) and an international trade impact assessment. If more detailed economic information than is contained in this summary is desired, the reader is referred to the full regulatory evaluation contained in the docket.

Costs

The FAA estimates the total monetary costs of the proposed rule to be zero. However, there would be some negligible qualitative costs in the form of inconvenience to operators of aircraft used for news-gathering. These costs are discussed below.

For the FAA, or any government or private authority that acts as the official in charge of emergency relief aircraft operations, the proposed rule would not impose any additional administrative costs for either personnel or equipment. Any additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources.

For aircraft operators, the proposed rule would not impose any additional equipment or operating costs. Potential equipment costs would be the acquisition of two-way radio equipment in order to contact the official in charge. Potentially affected aircraft would be air taxis or aircraft owned by news-gathering organizations. However, these aircraft routinely operate in airspace that requires two-way radio communication. Thus, the FAA assumes that these types of aircraft are already equipped with two-way radios. Operators of aircraft conducting authorized news-gathering operations could incur qualitative costs in the form of inconvenience. This would be the result of having to contact the official in charge of the emergency in addition to filing a flight plan with air traffic control. However, the FAA contends that the inconvenience of having to contact the official in charge would be negligible.

Benefits

The proposed rule is expected to accrue potential benefits primarily in the form of enhanced aviation safety to emergency response aircraft and news-gathering aircraft. These benefits are discussed below.

Safety benefits would take the form of a reduced risk in casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions. Of

course, the FAA does not know with certainty to what extent the proposal would help in preventing midair collisions. In addition, the FAA cannot predict with a reliable degree of certainty the frequency and magnitude of casualty loss resulting from a midair collision because it represents a random event.

The potentially disastrous incidents described in the background section of this notice posed an unnecessary and unwarranted diminution in the margin of safety of areas under temporary flight restrictions. By not contacting the official in charge, these pilots left themselves unaware of emergency air traffic information that was pertinent to not only their safety, but to the safety of fire fighters in the air and on the ground. The FAA contends that requiring aircraft operators conducting authorized news-gathering operations to contact the official in charge would increase their awareness of the emergency operations being conducted in the area. This increased awareness and information would increase safety by lowering the likelihood of a midair collision between news-gathering and emergency aircraft. Forest fires and other crisis situations in which emergency aircraft must operate are potentially dangerous enough without the added potential of colliding with news-gathering aircraft. This proposal would also increase efficiency by lowering the likelihood of emergency operations being suspended due to unidentified aircraft operating in the area.

Conclusion

The estimated dollar cost of this proposal is zero because there would be no costs incurred to acquire additional equipment or to hire personnel on the part of the FAA, the emergency relief authority, or aircraft operators. In qualitative terms, the proposed rule would impose negligible costs in the form of the inconvenience of news-gathering aircraft operators having to contact the official in charge. The potential benefits of this proposal would be the enhanced safety of requiring aircraft operators to be more aware of emergency relief aircraft traffic and other advisory information. This information is necessary to navigate safely within an area of temporary flight restrictions and would reduce the likelihood of a midair collision. This proposed action would also generate benefits in the form of an increased efficiency in emergency operations. On balance, the FAA firmly believes that the proposed rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The small entities that could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire, such as air taxi operators owning nine or fewer aircraft.

Only air taxi operators and aircraft operated by news-gathering organizations without two-way radios would be affected by this proposed amendment. However, the FAA assumes that all potentially affected aircraft already are equipped with two-way radios. This assumption is based on the fact that these aircraft must routinely operate in airspace that requires two-way communications with air traffic control. Therefore, the FAA certifies that this proposed amendment would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed amendment would neither have an effect on the sale of foreign aviation products or services in the United States, nor have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed amendment would neither impose costs on aircraft operators nor on aircraft manufacturers (U.S. or foreign) that would result in a competitive disadvantage to either.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, 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. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Airports, Air traffic control, Aviation safety, Noise control, Temporary flight restrictions.

The Proposed Amendment

For the reasons set forth in the preamble, the FAA proposes to amend part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 91.137(c)(5) is revised to read as follows:

§ 91.137 Temporary flight restrictions.

* * * * *

(c) * * *

(5) The aircraft is carrying properly accredited newsmen; and:

- (i) Prior to entering the area identified in the NOTAM, the pilot in command files a flight plan with the appropriate FAA or ATC facility specified in the NOTAM; and contacts the official in charge of on-scene emergency response activities for the purpose of obtaining information about current and forecasted disaster relief aircraft routes, altitudes, and operating areas; and
- (ii) After entering the area identified in the NOTAM, the pilot in command remains clear of the routes, altitudes, and operating areas identified by the official in charge or which otherwise appear to be used by disaster relief aircraft.

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Issued in Washington, DC, on July 18, 1991.

Jerry W. Ball,
Acting Director Air Traffic Rules and Procedures Service.

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