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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Plan of Integrated Airport Systems: Clarification of Wildlife Hazard Management Requirements for Non-Certificated Federally Obligated Airports

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice; extension of comment period.

SUMMARY: This action extends the comment period for a Notice that was published on December 10, 2012. Nothing has changed from the original document published on December 10, 2012. In that document, the FAA proposed to clarify Grant Assurance No. 19, "Operation and Maintenance," which is required of an airport sponsor as a condition of receiving a development grant under the Airport Improvement Program (AIP). This clarification would require non-certificated, federally obligated airports that, after the effective date of this Federal Register Notice, accept a new airport development grant funded under the Airport Improvement Program (AIP), or accept a transfer of land under the Surplus Property Act for airport purposes ("Subject Airports"), to conduct Wildlife Hazard Site Visits (WHSVs) or Wildlife Hazard Assessments (WHAs). Non-certificated airports are airports that do not have a Part 139 certificate, and may include both commercial service airports as well as non-primary airports that serve mostly general aviation traffic. The Secretary of Transportation is required to provide notice and comment in the Federal Register and an opportunity for the public to comment upon proposals to modify the assurances or add new assurances. The FAA has elected to extend the comment period closing date to allow respondents additional time to adequately analyze the Notice and prepare comments.

DATES: The comment period for the notice that published on December 10, 2012 (77 FR 73511) is extended. Send your comments on or before January 31, 2013. The FAA will consider comments received on the proposed interpretation of the existing grant

assurances. The FAA may adopt revisions resulting from comments as of the date of a subsequent Notice in the Federal Register.

ADDRESSES: You may send comments [identified by Docket Number FAA–2012-29591] using any of the following methods:

- Government-wide rulemaking Website: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Fax: 1–202–493–2251.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael J. O'Donnell, Director, Office Airport Safety and Standards, Room 621, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-3053, e-mail: mike.o'donnell@faa.gov.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to clarify the FAA's interpretation of 49 U.S.C. 47107(a) (19) and the corollary Grant Assurance No. 19, relating to airport operations and maintenance. The FAA proposes to require sponsors of federally obligated, non-certificated airports that, after the effective date of this Federal Register Notice, accept a new airport development grant funded under the

Airport Improvement Program, or accept a transfer of land under the Surplus Property Act for airport purposes to identify and mitigate wildlife hazards at their airports. These actions will take the form of initial Wildlife Hazard Site Visits (WHSVs) or Wildlife Hazard Assessments (WHAs), depending on the size of the airport, potentially followed by more detailed Wildlife Hazard Management Plans (WHMPs).

The purpose of a WHSV is for the sponsor to identify any immediate hazards and for the FAA to determine whether a more comprehensive WHA is necessary. A WHSV is typically conducted over a period of one to three days. A WHA is a far more comprehensive survey, typically conducted over a 12-month period. WHMP is the plan the airport proposes to mitigate any wildlife hazards found.

The Secretary must receive certain assurances from a sponsor (applicant) seeking financial assistance under title 49 U.S.C. 47107, as amended. Sponsors must submit and attest to these assurances as part of their application for Federal financial assistance, and the FAA incorporates these assurances into all AIP grant agreements. From time to time, as necessary, the FAA clarifies, modifies or supplements these assurances to reflect new requirements deemed reasonably necessary to carry out the Airport Improvement Program. A complete list of the current grant assurances is available at: http://www.faa.gov/airports/aip/grant_assurances/. The FAA amended and published the current assurances in the Federal Register on April 13, 2012 (see *"Airport Improvement Program (AIP) Grant Assurances,"* 77 FR 22376). The FAA uses a standard set of assurances for Airport Sponsors (owners/operators) called Appendix 1. The FAA is interpreting 49 USC 47107(a)(19) and the corollary grant assurance, No. 19, relating to airport operation and maintenance, to require airport sponsors to conduct wildlife hazard assessments or site visits and other actions as necessary, as detailed in this notice, to detect and identify wildlife hazards. The clarification relates to Appendix 1, Airport Sponsors assurances.

Grant Assurance No. 19, "Operation and Maintenance," requires a sponsor to operate "the airport and all facilities which are necessary to serve the aeronautical users of the

airport [...], in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation." Under Assurance No. 19, sponsors are also required to "have in effect arrangements for [...] promptly notifying airmen of any condition affecting aeronautical use of the airport."

The airports affected by this clarification of Grant Assurance No. 19 (Subject Airports) are non-certificated airports. Non-certificated airports include smaller commercial service airports, as well as non-primary airports that service mostly general aviation (GA) operations. These airports are typically smaller and have less air traffic, more piston-powered aircraft, and smaller jet aircraft, than certificated airports. This notice does not apply to Part 139 certificated airports. All Part 139 certificated airports will continue to follow Part 139 regulations for determining when WHA's are required.

The FAA has divided the Subject Airports into four categories based on based aircraft and total operations. The four categories are:

- a. Subject Airports with 100 or more based turbine-powered aircraft or 75,000 or more total annual operations.** The WHA must be initiated within three years of receiving a development grant after the final Federal Register notice. The airport sponsor must update its WHA at least once every 10 years thereafter.
- b. Subject Airports with between 20-99 based turbine-powered aircraft or 30,000-74,999 total annual operations.** The WHSV must be initiated within three years of receiving a development grant after the final Federal Register notice. The airport sponsor must update its WHSV at least once every five years thereafter.
- c. Subject Airports with between 0-19 based turbine-powered aircraft or between 10,000-29,999 total annual operations.** The WHSV must be

initiated within five years of receiving a development grant after the final Federal Register notice. The airport sponsor must update its WHSV at least once every five years thereafter.

- d. Subject Airports with no based turbine-powered aircraft and fewer than 10,000 total annual operations.** The WHSV must be initiated within eight years of receiving a development grant after the final Federal Register notice. The airport sponsor must update its WHSV at least once every five years thereafter.

Data for these categories comes from the FAA Form 5010-1, Airport Master Record database. The FAA classifies airports to fit within the highest applicable category: that is, if an airport's number of based turbine-powered aircraft would place it into one category, while the airport's number of annual operations would place it into a higher category, the FAA classifies the airport to be within the higher category.

When a WHSV is completed, the airport sponsor will provide a letter to the FAA along with the WHSV report. This letter will summarize pertinent wildlife information, any immediate mitigation activities the airport can do to alleviate or reduce wildlife hazards, and a recommendation as to whether a more comprehensive WHA is necessary. The FAA will then determine the need for a comprehensive WHA. Similarly, the FAA will determine if the conclusions and recommendations within a WHA warrant a WHMP.

The FAA further interprets the statutory and grant assurance obligations to require airport sponsors to update their WHAs every 10 years, and WHSVs at least once every five years thereafter. WHAs are granted a longer time before expiration because they cover a full year and are more comprehensive than WHSVs. WHSVs are one to three days in length, and are not nearly as comprehensive as WHAs. Like other WHAs, sponsors must submit the updated WHAs to the FAA Administrator for approval and determination of the need for a WHMP.

The clarification the FAA proposes represents the FAA's desire to continue to enhance safety and prevent accidents before they occur, and is consistent with its previous safety enhancement efforts. These efforts include rulemaking on the subject of Safety Management Systems (SMS), as well as Cert Alert No. 09-10 "Wildlife Hazard Assessments in Accordance with Part 139 Requirements" (June 11, 2009), which the FAA issued to remind Part 139 airport operators of their obligations to conduct Wildlife Hazard Assessments if certain criteria are met. In this Cert Alert, the FAA also recommended that Part 139 airports that had not experienced a triggering event voluntarily conduct a WHA. In addition, the Cert Alert recommended that airports update WHAs more than five years old. The FAA believes sponsors who accept new grants at Subject Airports need to be more proactive in the future and take steps to understand and alleviate the risks of wildlife strikes.

The FAA published Advisory Circular 5200-33B ("Hazardous Wildlife Attractants on or Near Airports") on August 28, 2007. Paragraph 2 states, "Airports that have received Federal grant-in-aid assistance must use these standards." The word "standards" in this section of the AC refers to the separation criteria for proposed land use practices, described in Section 1 of the AC and referenced in Section 4-3 of the AC. The FAA considers the grant assurances to require federally funded airports to adhere to the separation criteria.

The AC also recommends that federally funded airports near woodlands, wetlands, and water prepare wildlife hazard assessments (WHAs). Specifically, Paragraph 2-7 (c) states, "The FAA recommends that operators of airports surrounded by woodlands, water, or wetlands refer to Section 2.4 of this AC." The FAA has not interpreted this statement or the grant assurances to mean that non-certificated airports were required to do WHAs. This interpretation of the AC was reasonable based on the AC's plain language, its history, as well as the requirements for federally funded airports under Part 139, which were less stringent with regard to WHA triggering events.

The FAA is concurrently publishing the draft Advisory Circular, No. 5200-33C, on the

FAA's website at http://www.faa.gov/airports/resources/draft_advisory_circulars/ for public comment. To comment on the draft Advisory Circular, follow the instructions on the website.

Proposed changes to Advisory Circular 5200-33B include the removal of Section 2.7(c), "*Airports Surrounded by Wildlife Habitat*." The FAA also proposes to modify the Applicability section to be consistent with the FAA's interpretation of Grant Assurance No. 19. The FAA proposes interpreting the grant assurance to require non-certificated, federally obligated airports that accept a new airport development grant under the Airport Improvement Program (AIP), or a new surplus property conveyance, to monitor, evaluate, and mitigate risks associated with wildlife hazards. The FAA also proposes recommended procedures concerning off-airport attractants (i.e., notification and review of proposed land-use practice changes in the vicinity of public-use airports).

We are also clarifying in this Federal Register Notice that we interpret the phrase "farthest edge of the airport's AOA" in Para 1-4 of Advisory Circular 150/5200-33 ("Hazardous Wildlife Attractants on or Near Airports") to refer to the edge of the air operations area (AOA) closest to the wildlife attractant.

This serves as notice pursuant to 49 USC 47107(h) that the FAA interprets Grant Assurance No. 19 to include a requirement for all Subject Airports to undertake either a Wildlife Hazard Assessment (WHA) or Wildlife Hazard Safety Site Visit (WHSV), and to mitigate wildlife risks according to criteria set forth in this notice. This is done in accordance with the authority of the Secretary of Transportation to take such action that the Secretary considers necessary to carry out the Airport Improvement Program, including grant assurance requirements for sponsors. 49 U.S.C. 47107(g)(1)(A), 47122(a). To comment on this Notice, follow the instructions set forth under "Addresses," above.

Currently, Grant Assurance No. 19 reads, in part, "[The sponsor] will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions." To clarify, the FAA proposes to add language

addressing wildlife hazards to this sentence, so that it would read: “[The sponsor] will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to issues including, but not limited to, climatic and flood conditions, and wildlife hazards.”

This Federal Register Notice does not apply to Part 139 certificated airports. Specific requirements for certificated airports to alleviate wildlife hazards whenever detected are published at 14 CFR 139.337.

Under the Surplus Property Act of 1944, now codified at 49 U.S.C. 47151-47153, Congress authorized the conversion of surplus military airports to civilian public use airports. State or local governments request the Federal Government to convey land that is desirable for developing, improving, operating, or maintaining a public airport. The property is transferred to the new public-entity owner through an instrument of property conveyance. The transfer instrument contains deed covenants similar to the grant assurances, which the FAA enforces through 14 CFR Part 16. One of the deed covenants is a provision substantially similar to Grant Assurance No. 19 (See FAA Order 5150.2A, Appendix 3, paragraph 6(b)). This is to provide notice that the FAA will be interpreting this parallel provision of Grant Assurance No. 19 in a similar manner.

In summary, the FAA proposes to interpret the statutory and grant assurance provisions relating to safety, and the parallel deed covenant included in instruments of conveyance of surplus property, on a prospective basis, to require all Subject Airports to conduct either a WHA or WHSV, and to prepare a WHMP if necessary, upon acceptance of a new grant for a development project, or a new instrument of conveyance for surplus property after the effective date of the final Federal Register Notice. The FAA believes this will enhance safety in managing wildlife hazards at general aviation airports.

Additional Information: On March 4, 2008, a catastrophic wildlife strike involving a Cessna 500 Citation and an unknown number of migratory white pelicans resulted in five fatalities near Wiley Post Airport in Oklahoma City, OK. Following the National

Transportation Safety Board (NTSB) investigation, the NTSB recommended the FAA “[v]erify that all federally obligated general aviation airports that are located near woodlands, water, wetlands, or other wildlife attractants are complying with the requirements to perform wildlife hazard assessments as specified in Federal Aviation Administration Advisory Circular 150/5200-33B, *Hazardous Wildlife Attractants On or Near Airports*.” In response, the FAA stated it would:

“[...] modify Advisory Circular (AC) 150/5200-33B and our grant assurances to clarify the responsibility of federally obligated National Plan of Integrated Airport System/General Aviation (NPIAS/GA) airports, to conduct wildlife hazard assessments (WHA). To assist the airports in conducting the WHAs, we will make Airport Improvement Program (AIP) grant funds available to them and we will prepare a plan to establish the priority and subsequent schedule for completing the WHAs....”

Many populations of wildlife species commonly involved in aircraft strikes in the United States have increased markedly in number in the last few decades. For example, from 1980 to 2009, the resident (non-migratory) Canada goose population in the USA and Canada increased at a mean rate of 13.3 percent per year. Other species showing significant mean annual rates of increase included bald eagles (3.6 percent), wild turkeys (11.1 percent), turkey vultures (2.6 percent), American white pelicans (8.4 percent), double-crested cormorants (6.6 percent), and sandhill cranes (6.4 percent). Thirteen of the 14 bird species in North America with mean body masses greater than 8 lbs. have shown significant population increases over the past three decades. The white-tailed deer population increased from about 15 million in 1984 and to over 28 million in 2010.

In May 2009, the FAA authorized a study through the FAA Airport Technology Research and Development Branch to review the National Wildlife Strike Database and determine the current level of reporting and if it is sufficient to determine national trends. The two parts of this study, *Trends in Wildlife Strike Reporting, Part 1 – Voluntary System 1990-*

2008,” DOT/FAA/AR-09/65 (December 2009) and “*Wildlife Strike Reporting—Sources of Data in Voluntary System*,” DOT/FAA/AR-09/63 (December 2009), also reviewed whether strike reporting should be mandated and how the FAA can increase its data collection.

This study identified an increase in the total number of strikes reported from 20 percent of all strikes occurring from 1990 to 1994 to 39 percent of all strikes occurring from 2004 to 2008 at airports certificated under 14 Code of Federal Regulations (CFR) Part 139. Although there was a higher level of reporting, the total number of damaging strikes did not increase. The study attributes this to the successful implementation of professionally run wildlife hazard programs to mitigate significant wildlife hazards at many certificated airports (See *Trends in Wildlife Strike Reporting*, section 6).

The study did identify substantial reporting gaps in the reporting of bird strikes among certificated airports, air carriers, and GA airports. The report addressed GA airports listed in the NPIAS (and therefore eligible to receive grants of federal funding) separately from other GA airports. Less than 6 percent of all strike reports come from NPIAS GA airports, and reporting rates average less than 1/20 of the rates at Part 139 airports.

Although the current overall reporting rate of 39 percent is adequate to: 1) track national trends in wildlife strikes; 2) determine the hazard level of wildlife species that are being struck; and 3) provide a scientific foundation for FAA policies and guidance regarding the mitigation of risk from wildlife strikes, the study concluded that NPIAS GA airport strike reporting is underrepresented (see “*Trends in Wildlife Strike Reporting*,” section 5.2).¹ Whereas about 11 percent of the strikes reported from Part 139 airports indicated damage to the aircraft, about 50 percent of the strikes reported from NPIAS GA airports indicated damage. Thus, even though NPIAS GA airports report fewer total damaging strikes compared to Part 139 airports, such strikes constitute a much higher percentage

¹ This underreporting may be partly due requirement in part 139 that Class I-III airports conduct a wildlife hazard assessment and then implement a wildlife hazard management plan should one of four specified triggering events occur at the airport.

of their total reporting. This raises the concern that non-damaging strikes are occurring at these airports but going unreported.

Increased monitoring of general conditions and reporting of even non-damaging strikes by GA airports is important because it allows for identification of potential and minor hazards before they become major hazards, which in turn allows airports to prevent damaging strikes before they occur.

Turning to strike rates for GA aircraft at Part 139 compared to NPIAS GA airports, the reported strike rate for GA aircraft at Part 139 airports was nine times higher than the reported strike rate for GA aircraft at NPIAS GA airports. “GA aircraft” is defined in the study as non-commercial private, business, or government aircraft—see “*Trends in Wildlife Strike Reporting*,” section 4.3.3. However, the damaging strike rate for GA aircraft at Part 139 airports was three times higher than it was for GA aircraft at NPIAS GA airports. It is notable that of the 49 reported civil aircraft destroyed or damaged beyond repair because of wildlife strikes in the U.S. from 1990-2008, 33 (67 percent) occurred on or near GA airports.

According to the study, the number of Part 139 airports reporting at least one wildlife strike increased from 234 (42 percent of the 552 airports) in 1990 to 333 (60 percent) in 2008. The overall reported strike rates at individual Part 139 airports were 15 to 47 times higher compared to NPIAS non-certificated airports in each year (1990-2009). The average strike rate of all Part 139 airports compared to NPIAS non-certificated airports was 23 times higher during this same time. Although this may be explained by a different mix of aircraft using these two different categories of airports, the magnitude of the difference indicates that actual reporting rates for NPIAS GA airports are much lower than for Part 139 airports. This is supported in the study by an examination of reporting rates for damaging strikes where the magnitude of difference is much less. Whereas Part 139 airports had a 23-fold higher average reporting rate for all strikes compared to NPIAS GA airports, the reporting rate for damaging strikes was only 5-fold higher. Thus, even though fewer total damaging strikes are reported compared to Part

139 airports, there is more of a tendency at NPIAS GA airports to report damaging strikes compared to non-damaging strikes. As stated above, increased monitoring of wildlife conditions and reporting of even non-damaging strikes are important to prevent dangerous conditions and damaging strikes before they occur.

Issued in Washington, DC on January 10, 2013.

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