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[4910-13]

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapter I

Docket No. FAA-2018-0432

#### Policy on the Temporary Closure of Airports for Nonaeronautical Purposes

**AGENCY:** Federal Aviation Administration (FAA).

**Action:** Proposed Policy; Request for Comments

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**SUMMARY:** This notice announces a proposed update of the FAA policy regarding approval of the temporary closure of a federally obligated airport for a nonaeronautical purpose. Under Federal law, an airport operator that has accepted Federal grants is obligated to maintain the airport for public aviation use. In a limited exception to the general requirement, an airport operator may temporarily close the airport or part of the airport for a nonaeronautical event, if the FAA approves that closure in advance. The FAA proposes to adopt this policy statement to provide additional guidance to airport operators describing the process and criteria for evaluating airport closure requests, and the required contents of an airport operator's request for approval. The FAA is seeking comments on the proposed statement of policy.

**DATES:** Send your comments on or before [60 days after publication in the Federal Register].

**ADDRESSES:** You may send comments identified by Docket Number FAA-2018-0432 using any of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

*Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

*Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

*Fax:* Fax comments to Docket Operations at 202-493-2251.

For more information, see the SUPPLEMENTARY INFORMATION section of this document.

*Privacy:* In accordance with 5 U.S.C., 553(c), the Department of Transportation (DOT) solicits comments from the public on its proposed Policy on the Temporary Closure of Airports for Nonaeronautical Purposes. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Docket:* To read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket. or, go to the Docket Management Facility in Room W12-140 of the West Building

Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lorraine Herson-Jones, Manager, Airport Compliance Division, ACO-100, Federal Aviation Administration, 800 Independence Avenue, SW. Washington, DC 20591, telephone (202) 267-3085; facsimile: (202) 267-4629.

**AVAILABILITY OF DOCUMENTS:**

You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal

*(http://www.faa.gov/regulations/search);*

(2) Visiting FAA's Regulations and Policies Web page at

*(http://www.faa.gov/regulations\_policies; or*

(3) Accessing the Government Printing Office's Web page at

*(http://www.gpoaccess.gov/index.html.*

You can also get a copy by sending a request to the Federal Aviation

Administration, Office of Airport Compliance and Management Analysis, 800

Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3085.

Make sure to identify the docket number, notice number, or amendment number of this proceeding.

**AUTHORITY FOR THE POLICY:**

This notice is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

**SUPPLEMENTARY INFORMATION:****I. BACKGROUND:**Airport sponsor obligations

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) have agreed to comply with certain Federal policies included in each AIP grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA) (Pub. L. 97-248), as amended and recodified at 49 U.S.C., § 47107(a) (1), and the contractual sponsor assurances require that the airport sponsor make the airport available for aviation use. Title 49 U.S.C., § 47107(a) (8) requires grant agreements to include an assurance that “a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary [of Transportation].” This requirement is implemented by Grant assurance 19, *Operation and Maintenance*, which incorporates the requirement that a temporary airport closure for a nonaeronautical purpose be first approved by the Secretary. The Secretary’s approval authority has been delegated to the FAA as part of the administration of the AIP. It is the longstanding policy of the FAA that airport property be available for aeronautical use unless a particular nonaeronautical use is approved by the FAA.

Each year sponsors of federally obligated airports request temporary closure of a ramp, taxiway, runway or an entire airport for a nonaeronautical event, typically for a period of one to three days. Any such request must be approved by the FAA in advance before the

event can take place. While the FAA offices generally applied a consistent set of criteria to the evaluation of requests for temporary closure, the agency has not provided uniform guidance for sponsors on the process to apply for a temporary closure. The FAA believes that a detailed description of the contents of an application for temporary closure of airport facilities, and a clear listing of the obligations of an airport sponsor before, during and after a closure, will benefit both to airport sponsors and to the FAA offices handling applications.

Conducting an event on airport property is a complex undertaking. Whether the purpose is an aeronautical event (e.g., air show) or nonaeronautical event, and whether the event requires a full closure of the airport or simply a closure of a ramp or taxiway, the event will require detailed planning and preparation that should not be taken lightly. The airport sponsor's primary purpose is to operate a safe airport providing access to aviation community.

The FAA affirms in this Notice that federally assisted airports should remain open for aviation use. Where an airport sponsor does request a temporary closure of airport facilities for a nonaeronautical event, this Notice describes the required contents of a request, and the criteria for FAA's approval.

### **Summary of key provisions:**

The proposed policy statement provides a standard application process for approval of nonaeronautical events at a federally obligated airport, and a detailed explanation of the measures an airport sponsor will need to take in order to protect the airport and comply with the terms of the FAA grant agreements. In summary:

- As a first step, the airport sponsor should arrange a meeting with the local FAA office to discuss their plans for the event.
- Applications for temporary closure must be submitted to the FAA in writing in advance, with a complete explanation and justification for the event.
- The greater the degree of impact on aeronautical use, the greater the justification required for closure and the greater the need for mitigation of impacts on airport operations, facilities and resources.
- Mitigation measures to ensure safety and preservation of airport assets include:
  - Timely notice to tenants and to itinerant operators through NOTAMs;
  - Development of a ‘Safety Plan’ to include notice to airport tenants and users, special markings, airport security, and provisions for crowd control and separation from operations;
  - Filing of a Form 7460 when necessary to allow the FAA review of any temporary structures or other elements that may impact the National Airspace System (NAS);
  - Receipt of fair market value compensation for use of airport facilities; and
  - Restoration of all airport facilities to the condition prior to the event at the event proponent’s expense.
- The FAA will review applications for justification, adequate safety mitigation, full reimbursement of airport expenses, and protection and restoration of airport facilities.

## **II. THE PROPOSED POLICY**

In consideration of the foregoing, the Federal Aviation Administration proposes to adopt the following statement of policy on its statutory responsibility to review and approve or

disapprove requests for temporary closure of federally obligated airport facilities for a nonaeronautical airport event.

### **Policy on the Temporary Closure of Airports for Nonaeronautical Purposes**

To implement the requirements of 49 U.S.C., § 47107(a)(8) and AIP Grant Assurance 19, the FAA will use the following procedures and criteria to evaluate and approve requests for the temporary closure of a federally obligated airport for a nonaeronautical event.

**A. Policy.** Airports should remain available for aviation use. Under certain circumstances, the FAA may approve temporary closure for nonaeronautical event purposes, such as car races/shows, county fairs, parades, car testing, model airplane events, running events and fireworks; however, the FAA will not approve a closure where impacts to safety and efficiency have not been mitigated and would result in a negative impact to civil aviation. In most cases, the impact to aviation, safety, security, liability, and other risks outweighs the financial and community goodwill returns promised to the airport for nonaeronautical activities. A proposed nonaeronautical use of an airport should not prevent the airport from realizing its economic potential nor diminish or hamper its existing or forecasted role in the system of airports.

**B. Mitigation measures.** If a temporary closure of the airport is planned, the sponsor must ensure that adequate measures will be in place to:

1. Make no permanent change in airport facilities as depicted on the Airport Layout Plan;
2. Maintain the safety, efficiency, and utility of the airport consistent with the limited authority of the FAA to grant a temporary closure for a nonaeronautical event;

3. Provide timely notice to tenants and itinerant aircraft operators of the planned event and the effect on the availability of airport facilities;
4. Receive fair market value for all nonaeronautical use of airport property;
5. Use of airport property for nonaeronautical activities at less than fair market value is limited to community use as defined in section VII.D of the Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy);
6. Provide benefits to the airport that outweigh the temporary impact on aviation use;
7. Ensure that airport revenue, personnel and equipment are not used to subsidize non-airport activities;
8. Ensure compliance with operational safety, certification and security regulations, protection of airspace, and maintenance of the FAA design and safety standards during aircraft operations; and
9. Ensure that the sponsor does not surrender its rights and powers at any time before, during, or after the event.

**C. Degree of impact on aeronautical use.** The greater the effect on aeronautical use of the airport from a proposed closure, the greater the justification required for the temporary closure, and the more attention and detail required for mitigation of safety, efficiency and other impacts.

1. Where an event would require that aircraft operations be suspended during the event, a proposal must identify why closure of the airport is necessary, and how the proposed nonaeronautical use justifies loss of the use of the airport for the duration of the event. The proposal must include a Safety Plan that describes how based and itinerant aircraft operators will be advised of the closure.

2. Where an event would use aeronautical facilities but not require total suspension of aircraft operations, the Safety Plan must include measures to assure that the temporary changes in available facilities do not affect the safety of concurrent operations.
3. In all cases, an application for temporary closure must identify measures for maintaining separation between public event areas and aircraft operating areas.
4. Documentation must demonstrate that the event was coordinated with air carriers, Flight Standards District Office (FSDO), Air Traffic Control Tower (ATCT), aeronautical tenants and users serving the airport as applicable. Documentation must show that concerns have been properly addressed.
5. Identify other airports in the area that could accommodate diverted traffic during the closure.
6. Regional Airports Division (Region) or Airports District Office (ADO) should coordinate with the appropriate FAA regional Lines of Business. Most events trigger notification requirements as per the current version of FAA Order 7400.2, Procedures for Handling Airspace Matters, which requires internal coordination through the Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) system. When events have been circulated through the OE/AAA, the non-rulemaking airports (NRA) case number should be included in the agency approval/disapproval letter.
7. When the nonaeronautical event is at an airport with air carrier service, the sponsor must coordinate with the Transportation Security Administration.

**D. Airshows and aeronautical events.** While 49 U.S.C., § 47107(a)(8) and Grant Assurance 19 do not require Office of Airports approval of the temporary closure of an airport for *aeronautical* events in the processes of issuing an airshow waiver Flight Standards Service (AFS) will describe the safety conditions for the FAA's approval of the event. However, the AFS waiver relates to aircraft operations

and the separation between aircraft operations and the viewing public. AFS will coordinate the ground operations plan with Regions and ADOs as appropriate. Events that are primarily nonaeronautical with an air show or other aeronautical event as an incidental activity should be reviewed by the Region or ADO.

## **E. Maintaining safety**

1. For a proposed closure of the airport to operations or a closure of any part of the airfield movement area or proposed obstructions to movement area associated safety clearances, the sponsor must prepare a Safety Plan to include at least the following items:
  - a. Special markings for the event, and removal and restoration of markings after the event.
  - b. Notice to tenants and airmen, including appropriate NOTAMs.
  - c. Inspection and repair of any damage to airport property.
  - d. Reporting and marking of any structures affecting protected zones or surfaces.
  - e. Safe separation between aircraft operations and the public. These may include: special taxi routes, access to terminal gates, crowd control, vehicular routes, staging areas, and others.
  - f. Sponsor's determination and analysis that there is no adverse effect on the airport's approved security plan.
  - g. Where necessary to maintain the safety, security and efficiency of airport operations, Regions or ADOs should use applicable elements from the AC 150/5370-2, Operational Safety on Airports During Construction.
2. The airport sponsor must provide timely advance notice of the nonaeronautical event to pilots and airport tenants, and to the ATC tower if applicable. The sponsor must issue appropriate NOTAMs to advise itinerant pilots of any limited availability of the airport during the event. The sponsor must provide advance notice to airport businesses and other tenants of any effect on use of airport property during the event.

3. Filing of a Form 7460 may be necessary to obtain FAA review of any temporary structures on the airport and use of airport property. The Form 7460 can be filed prior to or with the application for approval of closure, but must be filed no later than 120 days prior to the event to allow time for the FAA to review, comment and response from proponent.

#### **F. Ensuring that the event sponsor bears the costs of the event**

1. The airport must recover fair market value (FMV) payment for the nonaeronautical use of airport property to the extent required by the Revenue Use Policy.
2. The airport sponsor must receive full compensation for the time of airport personnel and the use of airport resources for the event (e.g. police/airport operations overtime pay), but not necessarily staff time for review of the event.
3. Airport funds and resources may not be used to subsidize the event, except insofar as the event will be staged by the airport sponsor itself. Use of airport property for a nonaeronautical purpose at below fair market value payment is considered a subsidy.
4. The airport sponsor's agreement with the event promoter should contain the event promoter's binding written agreement to indemnify and hold harmless the airport sponsor for any damages, liabilities or judgments against the airport sponsor relating to the use of the airport for the event.

#### **G. Protection of airport property and resources**

1. The airport sponsor should assess the condition of airfield facilities and airport property in the event areas before the event, and have the event proponent acknowledge that condition in writing.

2. The airport sponsor's agreement with the event sponsor must include the event proponent's binding written agreement to restore airport property to its pre-event condition and repair all damage to airport facilities resulting from the event. All repairs and restoration of property must be completed at the expense of the event proponent in a timely manner and in conformance with FAA standards.
3. The event areas should be re-inspected following the event to assure that they have been restored to the preexisting condition.

### **III. APPLICATION FOR TEMPORARY AIRPORT CLOSURE**

To apply for temporary airport closure for a nonaeronautical purpose, an airport sponsor must submit a proposal to the Region or ADO for analysis and approval. In Block Grant states the proposal may be submitted to the State Block Grant Agency with a copy to the Region or ADO. The airport sponsor must submit sufficient information and assurances to indicate that each requirement has been or will be satisfied.

#### **Contents of Sponsor Request for Temporary Closure for a Nonaeronautical Event**

The airport sponsor requesting a temporary airport closure must submit the information below to the Region and or ADO or State Block Grant Agency to request approval of the temporary closure:

1. The dates of the proposed closure periods including any necessary set up and take down period. Identify whether this is an annual or one-time event.
2. An estimation of the number of operations (commercial, general aviation, military) to be impacted and how this number was determined.
3. An event map depicting:

- a. Where and how the airport property will be used for the nonaeronautical activity (e.g., spectator areas, parking areas, staging areas, fueling, concession areas).
  - b. Areas used for the event that have been developed or improved with Federal funds (identify the grant number and anticipated impact to the Federal investment).
  - c. Impacted Navigational Aids (NAVAIDs).
  - d. Location and description of elements<sup>1</sup> that may affect the NAS.
  - e. Structures or other elements that may require a form 7460 application.
4. Procedures and equipment to delineate closed areas (e.g., X on runways, fencing, gates, barricades, etc.).
  5. A Safety Plan.
  6. If applicable, a description of the mutual aid fire and rescue agreements and whether there needs to be a presence of mutual aid safety services during the event.
  7. Plan to assess the airport property prior to re-opening for aeronautical uses to identify and fix:
    - a. Damage.
    - b. Temporary markings HAZMAT issues (if applicable)
    - c. Conduct Foreign Object Debris (FOD) sweep.
  8. Identification of the party who will be responsible for funding any repairs and a timeframe within which the repairs will be made.
  9. Indicate impacts to NAVAIDs and procedures for taking these out and in service.
  10. Draft of the NOTAM(s) to be issued for the event.
  11. Certification of Notification to Stakeholders – at a minimum the following entities must be notified of the event and provided an opportunity to give feedback. The sponsor should address concerns from stakeholders and include comments and responses in the proposal,

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<sup>1</sup> E.g. pyrotechnics; electromagnetic radiation; radio frequency proposals; line-of sight obscurations/glare for the traffic pattern, Air Traffic Control Tower, intersecting runways or other airport environment areas needed for the safe and efficient use for the airport; etc.

including mitigation where applicable. Provide a list of those notified, the concerns raised and the mitigations made to address the concerns:

- a. Tenants, FBOs, airlines, and local users (e.g., DOD, etc.)
- b. Air traffic control tower
- c. Local aviation organizations
- d. Airport security and local law enforcement agencies
- e. Flight Standards District Office

12. An explanation of how the event benefits the airport and is compliant with the FAA Policy on Revenue Use.

- a. For an event proposed by a commercial/for-profit party:
  - i. Financial benefits must be equal to at least the fair market value of the subject property use.
  - ii. In-kind services or benefits must be equivalent to FMV compensation.
  - iii. Airport revenue cannot be used toward conducting the event (e.g., use of airport staff must be reimbursed, equipment rental, advertisement of the event cannot be funded in part or whole by the airport).
  - iv. The event should also generate intangible benefits for the airport such as community goodwill and community interest.
- b. For an event organized by a non-profit/charitable organization or by the airport sponsor itself on its own behalf. In all non-profit nonaeronautical cases there needs to be a benefit to the airport that clearly outweighs the loss or displacement of aeronautical activities.

Examples of benefits to the airport may include:

  - i. Advertising for the airport included in the event advertising at no cost to the airport.
  - ii. A percentage of ticket sales paid to the airport.

- iii. Intangible benefits (e.g., community goodwill, increasing local awareness of the airport, encouraging local and community support of the airport, generating an interest in airport use).
  - c. For events proposed by a party other than the airport sponsor, the event proponent should assume the costs of the event, e.g., equipment rental, advertisement of the event, staffing, and restoration of facilities to pre-event conditions.
13. Approval of the closure of airport facilities for a nonaeronautical event is a Federal action that requires environmental review.

Issued in Washington, DC on May 23, 2018

Kevin C. Willis, Director

Office of Airport Compliance

and Management Analysis

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