

(c) The FAA will publish a notice of its reevaluation findings in the FEDERAL REGISTER and notify in writing the aircraft operator that petitioned the FAA for reevaluation and the affected airport operator.

**§ 161.417 Notification of status of restrictions and agreements not meeting conditions-of-approval criteria.**

If the FAA has withdrawn all or part of a previous approval made under subpart D of this part, the relevant portion of the Stage 3 restriction must be rescinded. The operator of the affected airport shall notify the FAA of the operator's action with regard to a restriction affecting Stage 3 aircraft operations that has been found not to meet the criteria of § 161.305. Restrictions in agreements determined by the FAA not to meet conditions for approval may not be enforced with respect to Stage 3 aircraft operations.

**Subpart F—Failure to Comply With This Part**

**§ 161.501 Scope.**

(a) This subpart describes the procedures to terminate eligibility for airport grant funds and authority to impose or collect passenger facility charges for an airport operator's failure to comply with the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2151 *et seq.*) or this part. These procedures may be used with or in addition to any judicial proceedings initiated by the FAA to protect the national aviation system and related Federal interests.

(b) Under no conditions shall any airport operator receive revenues under the provisions of the Airport and Airway Improvement Act of 1982 or impose or collect a passenger facility charge under section 1113(e) of the Federal Aviation Act of 1958 if the FAA determines that the airport is imposing any noise or access restriction not in compliance with the Airport Noise and Capacity Act of 1990 or this part. Rescission of, or a commitment in writing signed by an authorized official of the airport operator to rescind or permanently not enforce, a noncomplying restriction will be treated by the FAA as action restoring compliance with the Airport

Noise and Capacity Act of 1990 or this part with respect to that restriction.

**§ 161.503 Informal resolution; notice of apparent violation.**

Prior to the initiation of formal action to terminate eligibility for airport grant funds or authority to impose or collect passenger facility charges under this subpart, the FAA shall undertake informal resolution with the airport operator to assure compliance with the Airport Noise and Capacity Act of 1990 or this part upon receipt of a complaint or other evidence that an airport operator has taken action to impose a noise or access restriction that appears to be in violation. This shall not preclude a FAA application for expedited judicial action for other than termination of airport grants and passenger facility charges to protect the national aviation system and violated federal interests. If informal resolution is not successful, the FAA will notify the airport operator in writing of the apparent violation. The airport operator shall respond to the notice in writing not later than 20 days after receipt of the notice, and also state whether the airport operator will agree to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

**§ 161.505 Notice of proposed termination of airport grant funds and passenger facility charges.**

(a) The FAA begins proceedings under this section to terminate an airport operator's eligibility for airport grant funds and authority to impose or collect passenger facility charges only if the FAA determines that informal resolution is not successful.

(b) The following procedures shall apply if an airport operator agrees in writing, within 20 days of receipt of the FAA's notice of apparent violation under § 161.503, to defer implementation or enforcement of a noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the FEDERAL REGISTER.

This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 60 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. The FAA will consult with the airport operator to attempt resolution and may request additional information from other parties to determine compliance. The review and consultation process shall take not less than 30 days. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the FEDERAL REGISTER.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the FAA will notify the airport operator in writing of such determination. Where appropriate, the FAA may prescribe corrective action, including corrective action the airport operator may still need to take. Within 10 days of receipt of the FAA's determination, the airport operator shall—

(i) Advise the FAA in writing that it will complete any corrective action prescribed by the FAA within 30 days; or

(ii) Provide the FAA with a list of the domestic air carriers and foreign air carriers operating at the airport and all other issuing carriers, as defined in §158.3 of this chapter, that have remitted passenger facility charge revenue to the airport in the preceding 12 months.

(4) If the FAA finds that the airport operator has taken satisfactory corrective action, the FAA will notify the

airport operator in writing and publish notice of compliance in the FEDERAL REGISTER. If the FAA has determined that the airport operator has imposed a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part and satisfactory corrective action has not been taken, the FAA will issue an order that—

(i) Terminates eligibility for new airport grant agreements and discontinues payments of airport grant funds, including payments of costs incurred prior to the notice; and

(ii) Terminates authority to impose or collect a passenger facility charge or, if the airport operator has not received approval to impose a passenger facility charge, advises the airport operator that future applications for such approval will be denied in accordance with §158.29(a)(1)(v) of this chapter.

(5) The FAA will publish notice of the order in the FEDERAL REGISTER and notify air carriers of the FAA's order and actions to be taken to terminate or modify collection of passenger facility charges in accordance with §158.85(f) of this chapter.

(c) The following procedures shall apply if an airport operator does not agree in writing, within 20 days of receipt of the FAA's notice of apparent violation under §161.503, to defer implementation or enforcement of its noise or access restriction until completion of the process under this subpart to determine compliance.

(1) The FAA will issue a notice of proposed termination to the airport operator and publish notice of the proposed action in the FEDERAL REGISTER. This notice will state the scope of the proposed termination, the basis for the proposed action, and the date for filing written comments or objections by all interested parties. This notice will also identify any corrective action the airport operator can take to avoid further proceedings. The due date for comments and corrective action by the airport operator shall be specified in the notice of proposed termination and shall not be less than 30 days after publication of the notice.

(2) The FAA will review the comments, statements, and data supplied by the airport operator, and any other available information, to determine if

the airport operator has provided satisfactory evidence of compliance or has taken satisfactory corrective action. If the FAA finds satisfactory evidence of compliance, the FAA will notify the airport operator in writing and publish notice of compliance in the FEDERAL REGISTER.

(3) If the FAA determines that the airport operator has taken action to impose a noise or access restriction in violation of the Airport Noise and Capacity Act of 1990 or this part, the procedures in paragraphs (b)(3) through (b)(5) of this section will be followed.

## PART 169—EXPENDITURE OF FEDERAL FUNDS FOR NONMILITARY AIRPORTS OR AIR NAVIGATION FACILITIES THEREON

Sec.

169.1 Applicability.

169.3 Application for recommendation and certification.

169.5 FAA determination.

AUTHORITY: 49 U.S.C. 106(g), 40101-40107, 40113-40114, 44501-44502, 46104, 47122, 47151-47153, 47302-47306.

### § 169.1 Applicability.

(a) This part prescribes the requirements for issuing a written recommendation and certification that a proposed project is reasonably necessary for use in air commerce or in the interests of national defense. The first two sentences of section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)): (1) Require such a recommendation and certification where Federal funds are to be expended for nonmilitary purposes for airports or air navigation facilities thereon; and (2) provide that any interested person may apply to the Administrator, under regulations prescribed by him, for a recommendation and certification.

(b) This part does not apply to projects for the expenditure of Federal funds for military purposes or for airports, or air navigation facilities thereon, operated by the Federal Aviation Administration.

[Doc. No. 9256, 34 FR 5718, Mar. 27, 1969]

### § 169.3 Application for recommendation and certification.

(a) Any interested person may apply to the Administrator for a recommendation and certification with respect to a proposed project for the acquisition, establishment, construction, alteration, repair, maintenance, or operation of an airport or an air navigation facility thereon by or in his interests, on which Federal funds are proposed to be expended for nonmilitary purposes. The application shall be filed with the Regional Airports Division or Airports District Office, whichever is appropriate, in whose geographical area the airport is located. The application must state—

(1) The name and address of the applicant, the owner of the airport, and the individual responsible for its operation and maintenance, and the interest of the applicant in the matter;

(2) The location of the airport, and of any air navigation facilities thereon;

(3) A technical description of the project;

(4) The information contained in the notice required by § 157.3 of this chapter; and

(5) All available pertinent data relating to the necessity of the airport or air navigation facility for use in air commerce including where applicable—

(i) The number and type of aircraft that use or would use the airport or facility;

(ii) The present and expected level of activity;

(iii) Any special use of the airport or facility such as its providing access to places of recreation as national forests or parks or to isolated communities where access by other means is not available or is curtailed by climatic condition; and

(iv) In the case of an airport or air navigation facility owned, operated, or maintained by a Federal agency other than the FAA, the relationship of the airport or facility to the performance of that agency's functions.

(b) Each of the following has the effect of a recommendation and certification, and a separate application under this part with respect thereto is not required: